



Health and Social Care Act 2008

2008 CHAPTER 14

PART 5

MISCELLANEOUS

Amendments relating to National Health Service

139 Duty of Primary Care Trusts

After section 23 of the National Health Service Act 2006 (c. 41) insert—

“23A Arrangements for improving quality of health care

- (1) Each Primary Care Trust must make arrangements to secure continuous improvement in the quality of health care provided by it and by other persons pursuant to arrangements made by it.
- (2) In discharging its duty under subsection (1) a Primary Care Trust must have regard to the standards set out in statements under section 45 of the Health and Social Care Act 2008.
- (3) “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.”

140 Pharmaceutical services

Schedule 12 (which contains amendments of the National Health Service Act 2006 and the National Health Service (Wales) Act 2006 (c. 42) relating to expenditure in connection with the provision of pharmaceutical services) has effect.

141 Remuneration for persons providing pharmaceutical services

- (1) In section 164 of the National Health Service Act 2006 (remuneration for persons providing pharmaceutical services)—

(a) after subsection (4) insert—

“(4A) An instrument of appointment—

- (a) must be contained in regulations if it provides for the appointment of a Primary Care Trust or other person as a determining authority in relation to the remuneration to be paid to persons who provide services under section 126, and
 - (b) if paragraph (a) does not apply, may be contained in regulations.”, and
- (b) in subsection (5), omit paragraph (b) and the word “and” immediately preceding it.

- (2) In section 88 of the National Health Service (Wales) Act 2006 (c. 42) (remuneration for persons providing pharmaceutical services)—

(a) after subsection (4) insert—

“(4A) An instrument of appointment—

- (a) must be contained in regulations if it provides for the appointment of a Local Health Board or other person as a determining authority in relation to the remuneration to be paid to persons who provide services under section 80, and
 - (b) if paragraph (a) does not apply, may be contained in regulations.”, and
- (b) in subsection (5), omit paragraph (b) and the word “and” immediately preceding it.

142 Indemnity schemes in connection with provision of health services

- (1) Section 71 of the National Health Service Act 2006 (c. 41) (schemes for meeting losses and liabilities of health service bodies) is amended as follows.

- (2) In subsection (1), after “the bodies” (in each place) insert “or other persons”.

- (3) In subsection (2)—

(a) after “The bodies” insert “and other persons”,

(b) after paragraph (g) insert—

“(h) the Secretary of State, and

(i) a body or other person (other than a body or other person within any of paragraphs (a) to (h)) providing, or arranging the provision of, health services whose provision is the subject of arrangements with a body or other person within any of paragraphs (a) to (h).”, and

(c) after “bodies which” insert “, or other persons who,”.

- (4) After subsection (2) insert—

“(2A) In subsection (1)(b) “functions”—

- (a) in relation to the Secretary of State, means the Secretary of State’s functions in connection with the health service;

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

- (b) in relation to a body or other person within paragraph (i) of subsection (2), means the body's or person's functions of providing, or arranging the provision of, health services whose provision is the subject of arrangements with a body or other person within any of paragraphs (a) to (h) of that subsection."
- (5) In subsection (3)—
 - (a) in paragraph (b), after "body which" insert ", or other person who," and
 - (b) in paragraph (c), after "Secretary of State" insert "(whether or not a participator in the scheme and, if a participator, whether or not required to make payments as a participator)".
- (6) For subsection (5) substitute—

"(5) The Secretary of State may make a direction under subsection (4) in respect of a body only if the body is within any of paragraphs (a) to (d), (f) and (g) of subsection (2)."
- (7) After subsection (8) insert—

"(9) In subsection (2)(i), the reference to a person providing health services does not include a person providing health services under a contract of employment.

(10) In this section "health services" means services provided as part of the health service."

Weighing and measuring of children

143 Weighing and measuring of children: England

- (1) In Schedule 1 to the National Health Service Act 2006 (c. 41) (further provision about the Secretary of State and services under that Act) after paragraph 7 insert—

"Weighing and measuring of children

- 7A
 - (1) The Secretary of State may, by arrangement with any local education authority, provide for the weighing and measuring of junior pupils in attendance at any school which is maintained by the authority.
 - (2) The Secretary of State may, by arrangement with the proprietor of any school which is not maintained by a local education authority, provide for the weighing and measuring of junior pupils in attendance at that school.
 - (3) The Secretary of State may, by arrangement with any person who is registered under Chapter 2 of Part 3 of the Childcare Act 2006 in respect of early years provision, provide for the weighing and measuring of young children for whom childcare is provided by that person.
 - (4) In sub-paragraphs (1) and (2) any expression to which a meaning is given for the purposes of the Education Act 1996 or the School Standards and Framework Act 1998 has the same meaning as in that Act; and in sub-paragraph (3) any expression to which a meaning is given for the purposes of Part 3 of the Childcare Act 2006 has the same meaning as in that Part.

- 7B (1) The Secretary of State may by regulations—
- (a) authorise the disclosure by any person with whom arrangements under paragraph 7A are made, to any person carrying out the weighing or measuring, of prescribed information relating to the children concerned,
 - (b) require any weighing and measuring provided for by the Secretary of State under paragraph 7A to be carried out in a prescribed manner and after compliance with any prescribed requirements,
 - (c) make provision authorising any resulting information relating to a child, together with any advisory material authorised by or under the regulations, to be communicated in a prescribed manner to a person who is, or is treated by the regulations as being, a parent of the child, and
 - (d) make other provision regulating the processing of information resulting from any weighing or measuring provided for by the Secretary of State under paragraph 7A.
- (2) Regulations made under sub-paragraph (1) may require any person exercising functions in relation to any weighing or measuring to which the regulations apply or in relation to information resulting from such weighing or measuring to have regard to any guidance given from time to time by the Secretary of State.
- (3) In sub-paragraph (1)(d), “processing”, in relation to information, has the same meaning as in the Data Protection Act 1998.
- (4) Regulations under this paragraph cannot include provision by virtue of section 272(8)(a) amending or repealing an Act.”
- (2) Until the commencement of Chapter 2 of Part 3 of the Childcare Act 2006 (c. 21), the reference in paragraph 7A(3) of Schedule 1 to the National Health Service Act 2006 (c. 41) (as inserted by subsection (1) of this section) to a person registered under Chapter 2 of Part 3 of the Childcare Act 2006 in respect of early years provision is to be read as a reference to a person registered under Part 10A of the Children Act 1989 (c. 41) in respect of child minding or the provision of day care (within the meaning of that Part).

144 **Weighing and measuring of children: Wales**

In Schedule 1 to the National Health Service (Wales) Act 2006 (c. 42) (further provision about the Welsh Ministers and services under that Act) after paragraph 7 insert—

“Weighing and measuring of children

- 7A (1) The Welsh Ministers may, by arrangement with any local education authority, provide for the weighing and measuring of junior pupils in attendance at any school which is maintained by the authority.
- (2) The Welsh Ministers may, by arrangement with the proprietor of any school which is not maintained by a local education authority, provide for the weighing and measuring of junior pupils in attendance at that school.

- (3) The Welsh Ministers may, by arrangement with any person who is registered under Part 10A of the Children Act 1989 (child minding and day care for children in Wales) in respect of child minding or the provision of day care, provide for the weighing and measuring of children looked after by that person.
 - (4) In sub-paragraphs (1) and (2) any expression to which a meaning is given for the purposes of the Education Act 1996 or the School Standards and Framework Act 1998 has the same meaning as in that Act; and in sub-paragraph (3) any expression to which a meaning is given for the purposes of Part 10A of the Children Act 1989 has the same meaning as in that Part.
- 7B (1) The Welsh Ministers may by regulations—
- (a) authorise the disclosure by any person with whom arrangements under paragraph 7A are made, to any person carrying out the weighing or measuring, of prescribed information relating to the children concerned,
 - (b) require any weighing and measuring provided for by the Welsh Ministers under paragraph 7A to be carried out in a prescribed manner and after compliance with any prescribed requirements,
 - (c) make provision authorising any resulting information relating to a child, together with any advisory material authorised by or under the regulations, to be communicated in a prescribed manner to a person who is, or is treated by the regulations as being, a parent of the child, and
 - (d) make other provision regulating the processing of information resulting from any weighing or measuring provided for by the Welsh Ministers under paragraph 7A.
- (2) Regulations made under sub-paragraph (1) may require any person exercising functions in relation to any weighing or measuring to which the regulations apply or in relation to information resulting from such weighing or measuring to have regard to any guidance given from time to time by the Welsh Ministers.
- (3) In sub-paragraph (1)(d), “processing”, in relation to information, has the same meaning as in the Data Protection Act 1998.
- (4) Regulations under this paragraph cannot include provision by virtue of section 203(10)(a) amending or repealing an Act.”

Social care

145 Human Rights Act 1998: provision of certain social care to be public function

- (1) A person (“P”) who provides accommodation, together with nursing or personal care, in a care home for an individual under arrangements made with P under the relevant statutory provisions is to be taken for the purposes of subsection (3)(b) of section 6 of the Human Rights Act 1998 (c. 42) (acts of public authorities) to be exercising a function of a public nature in doing so.
- (2) The “relevant statutory provisions” are—

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

- (a) in relation to England and Wales, sections 21(1)(a) and 26 of the National Assistance Act 1948 (c. 29),
 - (b) in relation to Scotland, section 12 or 13A of the Social Work (Scotland) Act 1968 (c. 49), and
 - (c) in relation to Northern Ireland, Articles 15 and 36 of the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I. 14)).
- (3) In subsection (1) “care home”—
- (a) in relation to England and Wales, has the same meaning as in the Care Standards Act 2000 (c. 14), and
 - (b) in relation to Northern Ireland, means a residential care home as defined by Article 10 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 (S.I. 2003/431 (N.I. 9)) or a nursing home as defined by Article 11 of that Order.
- (4) In relation to Scotland, the reference in subsection (1) to the provision of accommodation, together with nursing or personal care, in a care home is to be read as a reference to the provision of accommodation, together with nursing, personal care or personal support, as a care home service as defined by section 2(3) of the Regulation of Care (Scotland) Act 2001 (asp 8).
- (5) Subsection (1) does not apply to acts (within the meaning of section 6 of the Human Rights Act 1998 (c. 42)) taking place before the coming into force of this section.

146 Direct payments in lieu of provision of care services

- (1) Section 57 of the Health and Social Care Act 2001 (c. 15) (regulations may require or authorise direct payments to a person, with the person’s consent, in respect of the person securing the provision to the person of certain care services) is amended as follows.
- (2) After subsection (1) insert—
- “(1A) Regulations may make provision for and in connection with requiring or authorising the responsible authority in the case of a person (“P”) of a prescribed description—
- (a) who falls within subsection (2)(a), and
 - (b) who falls within subsection (5A) or is reasonably believed by the authority to fall within that subsection,
- to make, with the requisite consent, such payments as the authority may determine in accordance with the regulations to a suitable person other than P in respect of the other person’s securing the provision for P of the service mentioned in subsection (2)(a).
- (1B) In subsection (1A) “the requisite consent” means—
- (a) the consent of the other person; and
 - (b) where the other person is not a surrogate of P but there is at least one person who is a surrogate of P, the consent also of a surrogate of P.
- (1C) For the purposes of subsection (1A), a person (whether or not an individual) is “suitable” if—
- (a) that person is a representative of P;

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

- (b) that person is not a representative of P (or there is no-one who is a representative of P), but—
 - (i) a surrogate of P, and
 - (ii) the responsible authority,consider that person to be a suitable person to receive the payments for the purpose of securing provision for P of the service concerned; or
 - (c) that person is not a representative of P (or there is no-one who is a representative of P), and there is no-one who is a surrogate of P, but the responsible authority considers that person to be a suitable person to receive the payments for that purpose.”
- (3) In subsection (3) (provision which may be included in regulations under the section)—
 - (a) in paragraph (a) (provision as to circumstances in which payments not to be made), after “to a person” insert “or in respect of a person”,
 - (b) in paragraph (c)(i) (provision about determination of payee’s means), after “the payee’s means” insert “in the case of direct payments under subsection (1) or, in the case of direct payments under subsection (1A), the means of the person (“the beneficiary”) in respect of whom the payments are required or authorised to be made”,
 - (c) in each of paragraphs (d) and (e)(ii) (provision as to conditions to be complied with by payee, and provision as to repayments by payee or otherwise), after “payee” insert “in the case of direct payments under subsection (1), or by the payee or by the beneficiary in the case of direct payments under subsection (1A),” and
 - (d) after paragraph (h) insert—
 - “(j) as to matters to which the responsible authority must, or may, have regard when making a decision for the purposes of a provision of the regulations;
 - (k) as to steps which the responsible authority must, or may, take before, or after, the authority makes a decision for the purposes of a provision of the regulations;
 - (l) specifying circumstances in which a person who has fallen within subsection (5A) but no longer does so (whether because of fluctuating capacity, or regaining or gaining of capacity) is to be treated, or may be treated, as falling within subsection (5A) for purposes of this section or for purposes of regulations under this section.”
- (4) In subsection (4)(b) (gross payments: condition that payee pays amounts by way of reimbursement), after “payee” insert “in the case of direct payments under subsection (1), or the beneficiary in the case of direct payments under subsection (1A),”.
- (5) In subsection (5) (payments made net on basis that payee will contribute to cost of service)—
 - (a) in paragraph (a), after “the payee will himself” insert “in the case of direct payments under subsection (1), or the beneficiary will in the case of direct payments under subsection (1A),” and
 - (b) in paragraph (b), after “payee” insert “or (as the case may be) the beneficiary”.
- (6) After subsection (5) insert—

“(5A) A person falls within this subsection if the person lacks capacity, within the meaning of the Mental Capacity Act 2005, to consent to the making of direct payments.

(5B) In this section “representative”, in relation to a person, means such other person (whether or not an individual) as may be prescribed.

(5C) In this section “surrogate”, in relation to a person, means—

- (a) a deputy appointed for the person by the Court of Protection under section 16(2)(b) of the Mental Capacity Act 2005, or
- (b) a donee of a lasting power of attorney created by the person, whose powers, as deputy or donee, consist of or include such powers as may be prescribed.”

(7) After subsection (7) insert—

“(7A) For the purposes of subsection (3)(d), the conditions that are to be taken to be conditions in relation to direct payments include, in particular, conditions in relation to—

- (a) the securing of the provision of the service concerned,
- (b) the provider of the service,
- (c) the person to whom payments are made in respect of the provision of the service, or
- (d) the provision of the service.”

(8) In section 64 of the Health and Social Care Act 2001 (c. 15) (regulations and orders), after subsection (4) insert—

“(4A) A statutory instrument containing—

- (a) regulations made by the Welsh Ministers under section 57, or
- (b) regulations made by the Welsh Ministers under section 65 that make provision for the purposes of, in consequence of or for giving full effect to section 57,

is subject to annulment in pursuance of a resolution of the National Assembly for Wales.”

147 Abolition of maintenance liability of relatives

(1) The following provisions cease to have effect—

- (a) section 43 of the National Assistance Act 1948 (c. 29) (recovery from liable relative of local authority’s costs of assistance),
- (b) in section 47(9) of that Act (liability of maintained person, or person’s relatives, for expenditure incurred under section 47(8)), the words “or from any person who for the purposes of this Act is liable to maintain that person”,
- (c) in section 48(3) of that Act (liability of person in hospital etc., or person’s relatives, for costs of protecting person’s property), the words “, or from any person who for the purposes of this Act is liable to maintain him,”,
- (d) in section 51(1) of that Act (offence where person fails to maintain himself or any person he is liable to maintain), the words “or any person whom he is liable to maintain for the purposes of this Act”,

- (e) in paragraph 19(1) of Schedule 6 to that Act (which ended a saved liability to maintain a person where there was no liability to maintain that person for the purposes of that Act), the words “whom he is not liable to maintain for the purposes of this Act”,
 - (f) paragraph 19(2) of that Schedule (which gave continuing effect to certain saved liabilities not ended by paragraph 19(1)), and
 - (g) in section 46(5) of the Public Health (Control of Disease) Act 1984 (c. 22) (liability of person’s estate, or person’s relatives, for cost of burial or cremation under the section), the words “or from any person who for the purposes of the National Assistance Act 1948 was liable to maintain the deceased person immediately before his death”.
- (2) In section 29(4A)(c) of the National Assistance Act 1948 (c. 29) (which provides for section 43 to apply where accommodation in a hostel is provided under section 29(4) (c)), for “sections 32 and 43 of this Act shall apply as they apply” substitute “section 32 shall apply as it applies”.
- (3) In section 51(1) of that Act, for “, himself or any other person” substitute “him”.
- (4) In section 87(3) of the Social Work (Scotland) Act 1968 (c. 49) (provision of accommodation treated as being under Part 3 of the National Assistance Act 1948), for the words from “(as amended”, where first occurring, to “etc.)” substitute “(as amended by any enactment within the meaning of the Scotland Act 1998 (c. 46)) of the said Act of 1948”.
- (5) In Schedule 1 to the Local Authority Social Services Act 1970 (c. 42) (definition of “social services functions” for purposes of the 1970 Act), in the entry relating to sections 43 to 45 of the National Assistance Act 1948, for “Sections 43 to” substitute “Section”.
- (6) The provisions of this section have effect subject to, and in accordance with, Schedule 13.

148 Ordinary residence for certain purposes of National Assistance Act 1948 etc.

- (1) In section 24 of the National Assistance Act 1948 (authority liable for provision of accommodation) for subsections (6) and (7) substitute—
- “(6) For the purposes of the provision of residential accommodation under this Part, a patient (“P”) for whom NHS accommodation is provided shall be deemed to be ordinarily resident in the area, if any, in which P was resident before the NHS accommodation was provided for P, whether or not P in fact continues to be ordinarily resident in that area.
- (6A) In subsection (6) “NHS accommodation” means—
- (a) accommodation (at a hospital or elsewhere) provided under the National Health Service Act 2006 or the National Health Service (Wales) Act 2006, or
 - (b) accommodation provided under section 117 of the Mental Health Act 1983 by a Primary Care Trust or Local Health Board, other than accommodation so provided jointly with a local authority.”
- (2) In section 32 of that Act (adjustments between authority providing accommodation, etc., and authority of area of residence) for subsection (3) substitute—

- “(3) Any question arising under this Part as to a person’s ordinary residence shall be determined by the Secretary of State or by the Welsh Ministers.
- (4) The Secretary of State and the Welsh Ministers shall make and publish arrangements for determining which cases are to be dealt with by the Secretary of State and which are to be dealt with by the Welsh Ministers.
- (5) Those arrangements may include provision for the Secretary of State and the Welsh Ministers to agree, in relation to any question that has arisen, which of them is to deal with the case.”
- (3) In section 2 of the Chronically Sick and Disabled Persons Act 1970 (c. 44) (provision of welfare services) after subsection (1) insert—
 - “(1A) Subsections (3) to (5) of section 32 of the National Assistance Act 1948 (which relate to the determination of any question arising under Part 3 of that Act as to a person’s ordinary residence) apply in relation to any question arising under this section as to a person’s ordinary residence as they apply in relation to such a question arising under Part 3 of that Act.”

Financial assistance related to provision of health or social care services

149 Power of Secretary of State to give financial assistance

- (1) The Secretary of State may give financial assistance to qualifying bodies which are engaged in—
 - (a) the provision in England of health services or of social care services, or
 - (b) the provision to other persons of services that are connected with the provision in England by those other persons of health services or of social care services.
- (2) The Secretary of State may also give financial assistance to persons for the purposes of the establishment by them of qualifying bodies which satisfy any conditions prescribed for the purposes of this subsection and which are to be engaged in—
 - (a) the provision in England of health services or of social care services, or
 - (b) the provision to other persons of services that will be connected with the provision in England by those other persons of health services or of social care services.

150 Qualifying bodies

- (1) A body is a qualifying body for the purposes of this group of sections if—
 - (a) a reasonable person might consider that its activities are being carried on for the benefit of the community in England,
 - (b) except in the case of a body of a prescribed kind, it satisfies prescribed conditions relating to the distribution of its profits,
 - (c) it is carrying on a business, and
 - (d) it satisfies such other conditions as may be prescribed.
- (2) Regulations may provide that—
 - (a) a body may only be a qualifying body if it is of a prescribed kind;

- (b) activities of a prescribed description are to be treated as being, or as not being, activities which a reasonable person might consider are activities carried on for the benefit of the community in England.
- (3) “Community” includes a section of the community; and regulations may make provision about what does, does not or may constitute a section of the community.

151 Forms of assistance under s. 149

- (1) Subject to subsection (3), financial assistance under section 149 may be given in any form.
- (2) Assistance may, in particular, be given by way of—
 - (a) grants,
 - (b) loans,
 - (c) guarantees, or
 - (d) in the case of assistance under section 149(1) given to a company, purchasing share capital of the company.
- (3) Financial assistance under section 149(2) given to a company may not be given by way of purchasing share capital of the company.

152 Terms on which assistance under s. 149 is given

- (1) Financial assistance under section 149 may be given on such terms as the Secretary of State considers appropriate.
- (2) The terms may, in particular, include provisions as to—
 - (a) circumstances in which the assistance is to be repaid, or otherwise made good, to the Secretary of State, and the manner in which that is to be done;
 - (b) the keeping, and making available for inspection, of accounts and other records.
- (3) The person receiving assistance under section 149 must comply with the terms on which it is given, and compliance may be enforced by the Secretary of State.

153 Directions to certain NHS bodies

- (1) The Secretary of State may direct—
 - (a) a Primary Care Trust,
 - (b) a Strategic Health Authority,
 - (c) a National Health Service trust all or most of whose hospitals, establishments and facilities are situated in England, or
 - (d) a Special Health Authority performing functions only or mainly in respect of England,to exercise any functions of the Secretary of State in relation to financial assistance under section 149.
- (2) The Secretary of State may give directions to any of the bodies mentioned in subsection (1) about the exercise by it of any function of the Secretary of State which it exercises by virtue of that subsection.

154 Arrangements with other third parties

- (1) The Secretary of State may make arrangements for—
 - (a) financial assistance under section 149 to be given, or
 - (b) other functions relating to such assistance to be exercised,by a person other than a body mentioned in section 153(1) or an English local authority.
- (2) A person with whom the Secretary of State makes arrangements under subsection (1) is referred to in this section as P.
- (3) Arrangements under subsection (1) may provide for the functions concerned to be exercised by P—
 - (a) either wholly or to such extent as may be specified in the arrangements, and
 - (b) either generally or in such cases or circumstances as may be so specified.
- (4) Arrangements under subsection (1) may make provision—
 - (a) subject to section 151(3), as to the forms of financial assistance which may be given by P, and
 - (b) as to the terms on which financial assistance may be given by P.
- (5) Arrangements under subsection (1) may—
 - (a) provide for the Secretary of State to make payments to P, and
 - (b) make provision as to the circumstances in which any such payments are to be repaid to the Secretary of State.
- (6) In subsection (1) “English local authority” includes a non-metropolitan district council for an area for which there is a county council.

155 Power to form company

The Secretary of State may form, or participate in forming, one or more companies with a view to making arrangements under section 154(1) with the companies for financial assistance under section 149 to be given, or other functions relating to such assistance to be exercised, by the company.

156 Interpretation of group of sections

- (1) In this section and sections 149 to 155 “this group of sections” means this section and those sections.
- (2) In this group of sections—
 - “company” means a company as defined by section 1 of the Companies Act 2006 (c. 46);
 - “English local authority” means—
 - (a) a county council in England,
 - (b) a metropolitan district council,
 - (c) a non-metropolitan district council for an area for which there is no county council,
 - (d) a London borough council,
 - (e) the Common Council of the City of London, or
 - (f) the Council of the Isles of Scilly;

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

“health services” means services which must or may be provided for the purposes of the health service continued under section 1(1) of the National Health Service Act 2006 (c. 41) or services which are similar to such services;

“prescribed” means prescribed by regulations;

“qualifying body” has the meaning given by section 150;

“regulations” means regulations made by the Secretary of State;

“social care services” means services which an English local authority must or may provide or arrange to be provided under any of the following provisions—

(a) Part 3 of the National Assistance Act 1948 (c. 29),

(b) section 45 of the Health Services and Public Health Act 1968 (c. 46),

(c) section 117 of the Mental Health Act 1983 (c. 20), and

(d) section 254 of, and Schedule 20 to, the National Health Service Act 2006 (c. 41),

or services which are similar to such services.

National Information Governance Board for Health and Social Care

157 National Information Governance Board for Health and Social Care

(1) After section 250 of the National Health Service Act 2006 insert—

“The National Information Governance Board for Health and Social Care

250A National Information Governance Board: functions

(1) There is to be a board known as the National Information Governance Board for Health and Social Care.

(2) The functions of the Board are—

(a) to monitor the practice followed by relevant bodies in relation to the processing of relevant information,

(b) to keep the Secretary of State, and such bodies as the Secretary of State may designate by direction, informed about the practice being followed by relevant bodies in relation to the processing of relevant information,

(c) to publish guidance on the practice to be followed in relation to the processing of relevant information,

(d) to advise the Secretary of State on particular matters relating to the processing of relevant information by any person, and

(e) to advise persons who process relevant information on such matters relating to the processing of relevant information by them as the Secretary of State may from time to time designate by direction.

(3) The Board must, in exercising its functions, seek to improve the practice followed by relevant bodies in relation to the processing of relevant information.

(4) In this section “relevant information” means—

(a) patient information,

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

- (b) any other information obtained or generated in the course of the provision of the health service, and
 - (c) any information obtained or generated in the course of the exercise by a local social services authority in England of its adult social services functions.
- (5) In subsection (4) “patient information” means—
 - (a) information (however recorded) which relates to the physical or mental health or condition of an individual (“P”), to the diagnosis of P’s condition or to P’s care or treatment, and
 - (b) information (however recorded) which is to any extent derived, directly or indirectly, from that information,

whether or not the identity of the individual in question is ascertainable from the information.
- (6) The Board must provide advice under subsection (2)(d) if requested to do so by the Secretary of State; and may provide advice under subsection (2)(d) or (e) without being requested to do so by the person to whom the advice is to be provided.
- (7) A relevant body must have regard to any guidance published under subsection (2)(c) and any advice given to it under subsection (2)(e); and the Secretary of State must have regard to any advice given under subsection (2)(d).
- (8) The Board may request any relevant body to provide the Board with specified information for the purpose of enabling the Board to ascertain whether the relevant body has had proper regard to—
 - (a) guidance given under subsection (2)(c),
 - (b) advice given under subsection (2)(e), and
 - (c) any advice given to the relevant body by the Secretary of State.
- (9) In this section—
 - “adult social services functions”, in relation to a local social services authority, means the authority’s social services functions (within the meaning of the Local Authority Social Services Act 1970), other than those for which the authority’s director of children’s services is responsible under section 18 of the Children Act 2004;
 - “processing”, in relation to information, has the same meaning as in the Data Protection Act 1998;
 - “relevant body” means—
 - (a) any body or person engaged in the provision of the health service, including a body or person so engaged under contract, or
 - (b) any body or person providing social care services;
 - “social care services” means services provided by a local social services authority in England in the exercise of its adult social services functions.

250B National Information Governance Board: Wales

- (1) The functions of the National Information Governance Board for Health and Social Care, except—
 - (a) its functions under section 252 in relation to regulations under section 251, and
 - (b) its functions under subsection (2),are exercisable only in relation to England.
- (2) In relation to Wales, the Secretary of State may seek the views of the Board on such matters concerned with the processing of information falling within section 250A(4)(a) or (b) as the Secretary of State considers appropriate.

250C National Information Governance Board: further provisions.

- (1) The Secretary of State may by regulations make provision about the National Information Governance Board for Health and Social Care.
- (2) The regulations may, in particular, make provision as to—
 - (a) the appointment of the chair and other members of the Board by the Secretary of State or such other person as may be prescribed,
 - (b) the terms of appointment of members,
 - (c) the establishment and membership of committees or sub-committees of the Board,
 - (d) the delegation by the Board of its functions, and
 - (e) the proceedings of the Board.
- (3) The regulations may make provision as to the payment by the Secretary of State of such expenses incurred by the Board or any committee or sub-committee of the Board as the Secretary of State may determine.
- (4) The regulations may also make provision for the payment to members of the Board or any committee or sub-committee of the Board of such remuneration or allowances as the Secretary of State may determine.
- (5) Regulations under this section cannot include provision by virtue of section 272(8)(a) amending or repealing an Act.

250D National Information Governance Board: annual reports

- (1) The National Information Governance Board for Health and Social Care must, not later than 3 months after the end of each reporting year—
 - (a) prepare a report on its activities during the year, and
 - (b) send a copy of the report to the Secretary of State.
- (2) In subsection (1) “reporting year” means—
 - (a) such period of not more than 12 months beginning with the day on which the Board is first established as the Board may determine, and
 - (b) each successive period of 12 months.”
- (2) The Patient Information Advisory Group (as continued by section 252 of the National Health Service Act 2006 (c. 41)) is abolished.

158 Duty to consult Board in relation to regulations about patient information

For section 252 of the National Health Service Act 2006 substitute—

“252 Consultation with National Information Governance Board

- (1) Before laying before Parliament a draft of any statutory instrument containing regulations under section 251(1), or making any regulations pursuant to section 251(5)(b), the Secretary of State must seek and have regard to the views of the National Information Governance Board for Health and Social Care on the proposed regulations.
- (2) The Secretary of State must publish, in such manner as the Secretary of State considers appropriate, any views received from the Board on the proposed regulations.”

*Functions of Health Protection Agency in relation to biological substances***159 Functions of Health Protection Agency in relation to biological substances**

- (1) The National Biological Standards Board is abolished (and, accordingly, the Biological Standards Act 1975 (c. 4) ceases to have effect).
- (2) The Health Protection Agency Act 2004 (c. 17) is amended as follows.
- (3) After section 2 insert—

“2A Functions in relation to biological substances

- (1) The Agency has such functions in relation to a matter specified in subsection (2) as the relevant authority directs.
- (2) Those matters are—
 - (a) the establishment of standards for biological substances;
 - (b) the preparation, approval and provision of standard preparations of biological substances;
 - (c) the testing of biological substances.
- (3) The relevant authority shall be deemed to have directed under subsection (1) that the Agency is to have the functions specified in paragraphs (a) to (f) of Article 2 of the 1976 Order (the pre-abolition functions of the National Biological Standards Board).
- (4) The direction under subsection (3)—
 - (a) shall be deemed to have been given on the commencement of that subsection;
 - (b) may be varied in the same way as any other direction under subsection (1);
 - (c) is not affected by the repeal of the Biological Standards Act 1975 or by the 1976 Order ceasing to have effect as a result of that repeal.
- (5) In this section—

“biological substance” means a substance whose purity or potency cannot, in the opinion of the Secretary of State, be adequately tested by chemical means;

“the relevant authority” means—

- (a) the Secretary of State, and
- (b) the Department of Health, Social Services and Public Safety in Northern Ireland,

acting jointly;

“the 1976 Order” means the National Biological Standards Board (Functions) Order 1976.

- (6) The generality of section 2(1) is to be taken not to be prejudiced by this section; and the generality of subsections (1) to (4) is to be taken not to be prejudiced by section 2.”

- (4) In section 6 (meaning of “appropriate authority”), after subsection (5) insert—

“(6) Subsections (2) to (5) do not apply in relation to biological-substances functions.

- (7) In relation to any biological-substances function, the appropriate authority is—

- (a) the Secretary of State, and
- (b) the Department of Health, Social Services and Public Safety in Northern Ireland,

acting jointly.

- (8) In subsections (6) and (7) “biological-substances function” means—

- (a) a function of the Agency under section 2A, or
- (b) a function of the Agency under section 2(1), (2)(a) or (b), (3), (4) or (10) that is a function in relation to a matter specified in section 2A(2).”

- (5) In section 8 (power to make transfer schemes)—

- (a) after subsection (4) insert—

“(4A) The Secretary of State and the Department of Health, Social Services and Public Safety in Northern Ireland, acting jointly, may make a scheme for the transfer of property, rights and liabilities of the National Biological Standards Board to the Agency.”, and

- (b) in subsection (7), after “section 2” insert “, 2A”.

- (6) In section 9 (directions)—

- (a) in subsection (2) (certain directions to be given in regulations made by statutory instrument), after “section 2(2), (3) or (4)” insert “or 2A(1),”; and
- (b) in subsection (3) (certain statutory instruments making regulations giving directions to be subject to annulment), after “section 2(2)(a) or (3)” insert “or 2A(1)”.

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

Further amendments

160 Minor and consequential amendments relating to Part 5

Schedule 14 (which contains further amendments related to the provisions of this Part) has effect.