

HEALTH AND SOCIAL CARE ACT 2012

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 6 – Primary Care Services

Section 202 - Medical services: minor amendments

1222. This section makes some minor changes to sections 86 (Persons eligible to enter into General Medical Services (GMS) contracts), 89 (GMS contracts: other required terms) and 93 (Persons with whom agreements may be made under section 92) of the NHS Act to improve consistency and as an aid to interpretation.

Section 203 - Persons eligible to enter into general dental services contracts

1223. This section amends section 102 of the NHS Act to provide for amendments to the organisational types and the background of persons who are permitted to enter into a general dental services (GDS) contract. The section extends slightly the range of organisational arrangements whilst continuing to provide for the professional dental nature of GDS providers through new rules on what constitutes acceptable control of a contracting body.
1224. *Subsections (2), (3) and (4)* amend section 102(1) and (2) to provide that, whilst a GDS contractor must always include a dental practitioner, in future any person would be able to be part of a limited liability partnership (LLP) or a company limited by shares providing GDS.
1225. *Subsections (5), (6) and (7)* permit those entering into a GDS contract to arrange their affairs as an LLP, provided that at least one member is a dental practitioner, or falls within a defined group of people within the NHS. This extends the existing provisions which allow dental bodies corporate to enter into a GDS contract, as well as individual dentists and dental partnerships.

Section 204 - Arrangements under section 107 of the National Health Service Act 2006

1226. This section amends section 108 of the NHS Act to provide amendments which relate to the organisational types and the background of persons who are permitted to enter into a section 107 arrangement (a PDS agreement). This paragraph removes certain restrictions in relation to the people and organisations that can be party to a PDS agreement.
1227. *Subsections (2) to (4)* follow the approach used in the amendment to section 102(1). They amend section 108(1) and insert new subsections (1A), (1B) and (1C) into section 108, which allow the Board to make section 107 (PDS) agreements with a dental corporation or, where certain conditions are satisfied, with a company limited by shares or a limited liability partnership, provided that at least one member is a dental practitioner, or falls within a defined group of people within the NHS, and that such a

person has the power to ensure that the partnership's affairs are conducted in accordance with wishes.

1228. *Subsection (5)* omits current section 108(2) as the section is no longer required as a consequence of the amendment to section 108(1).
1229. *Subsection (6)* omits the definition of qualifying bodies, following the adoption of the nomenclature "company limited by shares" and inserts a definition of "dental corporation".

Section 205 - Payments in respect of costs of sight tests

1230. This section amends section 180 of the NHS Act (payments in respect of costs of optical appliances). Further amendments to this section are made in Schedule 4 to take account of the fact that in future such payments will be made by the NHS Commissioning Board.
1231. *Subsection (2)* amends section 180 by inserting a new paragraph (za) into subsection (3) which clarifies the existing payment powers that underlie current practice.
1232. *Subsection (3)* inserts new subsection (3A) into section 180 to clarify the level of repayments which may be made. The clarification is in line with existing practice.

Section 206 - Pharmaceutical needs assessments

1233. This section makes amendments to sections 24, 24A, 128A, 242 and 242A of the NHS Act.
1234. *Subsection (1)* amends section 128A of the NHS Act which makes provision in respect of the arrangements for preparing pharmaceutical needs assessments. Pharmaceutical needs assessments are closely aligned to joint strategic needs assessments which are addressed in section 189. The amendments to section 128A will ensure that the responsibility for developing, updating and publishing local pharmaceutical needs assessments is transferred from PCTs to health and wellbeing boards in local authorities.
1235. *Subsections (2) to (5)* amend sections 24, 24A, 242 and 242A respectively to remove, pending the abolition of PCTs and SHAs, their consultation and service user engagement obligations. In practical terms, these obligations are effectively discharged by PCTs when complying with the requirements in section 128A when they consult in relation to their pharmaceutical needs assessments.

Section 207 - Control of entry on pharmaceutical lists

1236. This section makes amendments to paragraphs 129, 130 and 136 of Schedule 12 to the NHS Act.
1237. *Subsection (2)* amends subsection (2)(c) of section 129 of the NHS Act. Section 129 makes provision in respect of the control of entry test which applies in respect of the right to be included on the pharmaceutical list in order to provide pharmaceutical services. The amendments to subsection (2)(c) provide that the NHS Commissioning Board is to be responsible for determining applications for market entry in England (inclusion in the pharmaceutical list or additional premises) in line with the relevant pharmaceutical needs assessment as prescribed in regulations.
1238. *Subsection (3)* inserts a new subsection (2ZA) into section 129 of the NHS Act which provides that the NHS Commissioning Board may not include the Secretary of State and such other persons as may be prescribed in regulations in a pharmaceutical list.
1239. *Subsection (4)* amends subsection (2A) of section 129 of the NHS Act consequential to the establishment of the NHS Commissioning Board and the requirement to have regard to a pharmaceutical needs assessment prepared in respect of a particular area before granting an application.

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1240. *Subsection (5)* substitutes subsection (2B) of section 129 of the NHS Act so as to define the “relevant area” in relation to a needs statement, for the purposes of subsection (2A), by reference to the area to which an application relates. The intention is that regulations will make provision for the relevant area to be linked to the area of the pharmaceutical needs assessment as currently published and updated by PCTs and in future by health and wellbeing boards.
1241. *Subsections (6) and (7)* amend subsections (2C) and (4)(c) of 129 of the NHS Act consequential to the amendments at subsections (4) and (5) of this section.
1242. *Subsection (8)* makes amendments to subsection (6)(g) of section 129 of the NHS Act to put it beyond doubt that regulations under section 129 may provide for the removal of a person from the pharmaceutical list for reasons that are not connected to a person’s fitness to practise, and are not the grounds specified in subsection (6)(d), but rather are other grounds prescribed in regulations. The intention is that, for consistency with the amendments made to section 130 of the NHS Act, any appeals against decisions to remove a person from a list on other prescribed grounds are to be made to the Secretary of State (that is, in practice, to the National Health Service Litigation Authority).
1243. *Subsections (9), (11) and (12)* amend subsection (10B) of section 129 and section 136 of, and Schedule 12 to, the NHS Act consequential to the responsibility for pharmaceutical needs assessments transferring to health and wellbeing boards and as a consequence of pharmaceutical needs assessments being carried out by reference to “relevant areas” as defined in section 129 of the NHS Act.
1244. *Subsection (10)* amends section 130 of the NHS Act so as to ensure that appeals against the NHS Commissioning Board’s determination of an application for inclusion in the pharmaceutical list are heard by the First Tier Tribunal only if they are on fitness to practise grounds. The amendments also provide that if the First Tier Tribunal does allow an appeal, it would not have to re-determine the application but can remit the matter back to the NHS Commissioning Board. Appeals on other grounds are to be made to the Secretary of State. It is intended that the current position, whereby the Secretary of State’s functions relating to hearing appeals on pharmaceutical list matters are delegated to the National Health Service Litigation Authority will be maintained.

Section 208 - Lists of performers of pharmaceutical services and assistants etc.

1245. This section makes provision for the NHS Commissioning Board to establish lists of Local Pharmaceutical Service performers and those who assist pharmaceutical contractors in the provision of pharmaceutical services.
1246. *Subsection (1)* of this section omits sections 146, 149 and 150 of the NHS Act which make provision for the compilation and publication of lists of Local Pharmaceutical Service performers and those who assist pharmaceutical contractors in the provision of services.
1247. *Subsection (2)* of this section inserts new sections 147A and 147B into the NHS Act which introduce composite regulation making powers in respect of, among other things, the compilation and publication of lists of Local Pharmaceutical Service performers and those who assist pharmaceutical contractors in the provision of pharmaceutical services.
1248. Subsection (1) of new section 147A provides that the Secretary of State may make regulations providing for the NHS Commissioning Board to maintain and publish one or more lists of those persons who assist pharmaceutical contractors or who are Local Pharmaceutical Service performers.
1249. Subsection (2) of new section 147A enables the regulations to provide that persons of a prescribed description (such as pharmacist managers and employees or pharmacy technicians) may not assist in the provision of pharmaceutical services which the Board arranges, or perform local pharmaceutical services, unless such persons are included in a list prepared by virtue of regulations made under subsection (1).

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1250. Subsection (3) of new section 147A makes detailed provision, carried forward from sections 146 and 149 of the NHS Act, in respect of other matters that may be included in the regulations about such lists. These matters include how such lists are to be published and maintained, the criteria for inclusion in a list, how applications are to be made and the supporting information that is required, the grounds for admittance, refusal, or suspension from the list and corresponding appeal rights.
1251. Subsection (4) of new section 147A enables the regulations to provide for the approval of a person who is entered on a pharmaceutical list for the purposes of either paragraph (a) or (b) of subsection (1) to be treated as approval for the purposes of the other paragraph. The regulations may therefore provide that approval for the purposes of entry to a Local Pharmaceutical Service performer's list may similarly be treated as approval for the purposes of entry to a pharmaceutical assistants' list and vice versa.
1252. Subsections (5) and (6) of new section 147A enable the regulations to make provision in respect of conditional entry to a pharmaceutical performers' or assistants' list and to specify the purposes for which such conditions may be imposed.
1253. Subsections (7) to (9) of new section 147A enable further provision to be made relating to the suspension or removal of a person from a list and for appeals against decisions to suspend or remove a person from a list or to impose conditions.
1254. Subsection (10) of new section 147A enables provision to be made authorising the disclosure by the NHS Commissioning Board of information about applicants for inclusion on a list, grants or refusals of applications, or suspensions or removals.
1255. New section 147B makes further provision about regulations under section 147A.
1256. Subsection (1) of new section 147B enables regulations under section 147A to make provision requiring a person who is included in a pharmaceutical list or a list made under section 132(2) of the NHS Act not to employ or engage another person to assist in the provision of pharmaceutical services unless that person is included in a list mentioned in subsection (2).
1257. Subsection (2) of new section 147B sets out the lists referred to in subsection (1) in which a person would need to be included in order to be employed by a person who is included in a pharmaceutical list. These include the lists made under section 147A and also medical, dental or ophthalmic lists.
1258. Subsection (3) of new section 147B enables regulations to require that persons referred to in subsection (1) of section 147A must both be included in lists prepared by the Board.
1259. *Subsection (7)* of this section makes transitional provision which preserves the effect of any regulations made under section 146 or 149 of the NHS Act despite the repeal of those sections so that the provisions of those regulations continue to have effect as if they had been made under section 147A of the NHS Act.