

Health and Social Care (Community Health and Standards) Bill

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Department of Health, will be published separately as Bill 70-EN.

EUROPEAN CONVENTION ON HUMAN RIGHTS

Mr Secretary Milburn has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Health and Social Care (Community Health and Standards) Bill are compatible with the Convention rights.

Health and Social Care (Community Health and Standards) Bill

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A
B I L L

TO

Amend the law about the National Health Service; to make provision about quality and standards in the provision of health and social care, including provision establishing the Commission for Healthcare Audit and Inspection and the Commission for Social Care Inspection; to amend the law about the recovery of NHS costs from persons making compensation payments; to provide for the replacement of the Welfare Food Schemes; to make provision about appointments to health and social care bodies; and for connected purposes.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART 1

NHS FOUNDATION TRUSTS

Introductory

1 NHS foundation trusts

- (1) An NHS foundation trust is a public benefit corporation which is authorised under this Part to provide goods and services for the purposes of the health service in England. 5
- (2) A public benefit corporation is a body corporate which, in pursuance of an application under this Part, is constituted in accordance with Schedule 1.

2 Independent Regulator of NHS Foundation Trusts 10

- (1) There is to be an officer known as the Independent Regulator of NHS Foundation Trusts (referred to in this Part as “the regulator”).
- (2) The Secretary of State is to appoint a person to the office of regulator.
- (3) Schedule 2 (which makes further provision about the regulator) has effect.

3 General duty of regulator

The regulator must exercise his functions in a manner that is consistent with the performance by the Secretary of State of the duties under sections 1, 3 and 51 of the National Health Service Act 1977 (c. 49) (duty as to health service and services generally and as to university clinical teaching and research).

5

*Authorisation of foundation trusts***4 Applications by NHS trusts**

- (1) An NHS trust may make an application to the regulator for authorisation to become an NHS foundation trust, if the application is supported by the Secretary of State. 10
- (2) The application must –
- (a) describe the goods and services which the NHS trust proposes should be provided by the NHS foundation trust, and
 - (b) be accompanied by a copy of the proposed constitution of the trust;
- and must give any further information which the regulator requires the NHS trust to give. 15
- (3) The applicant may modify the application with the agreement of the regulator at any time before authorisation is given under section 6.
- (4) Once an NHS trust has made the application –
- (a) the provisions of the proposed constitution which give effect to paragraphs 3 to 16 of Schedule 1 have effect, but only for the purpose of electing a shadow board of governors and appointing a shadow board of directors, 20
 - (b) the NHS trust may do anything (including the things mentioned in paragraph 16 of Schedule 2 to the National Health Service and Community Care Act 1990 (c. 19) (general powers)) which appears to it to be necessary or desirable for the purpose of preparing it for NHS foundation trust status. 25

5 Other applications

- (1) An application may be made to the regulator by persons (other than an NHS trust) to be incorporated as a public benefit corporation and authorised to become an NHS foundation trust, if the application is supported by the Secretary of State. 30
- (2) The application must –
- (a) describe the goods and services which the applicants propose should be provided by the trust, and 35
 - (b) be accompanied by a copy of the proposed constitution of the trust;
- and must give any further information which the regulator requires the applicants to give.
- (3) If it appears to the regulator that – 40
- (a) provision of the goods and services described in the application is likely to assist in the performance of the duties mentioned in section 3,
 - (b) the trust as proposed to be constituted will be able to provide those goods and services, and

-
- (c) the proposed constitution accords with Schedule 1 and is otherwise appropriate,
he may issue a certificate of registration.
- (4) The applicants may modify the application with the agreement of the regulator at any time before the certificate is issued. 5
- (5) On the issue of the certificate, the applicants are incorporated as a public benefit corporation.
- (6) The certificate is conclusive evidence of incorporation.
- (7) Once the certificate has been issued –
- (a) the proposed constitution has effect, but the applicants may exercise the functions of the corporation on its behalf until a board of directors is appointed in accordance with the constitution, 10
 - (b) the corporation may do anything (including the things mentioned in section 18) which appears to it to be necessary or desirable for the purpose of preparing it for NHS foundation trust status. 15
- 6 Authorisation of NHS foundation trusts**
- (1) The regulator may give an authorisation under this section –
- (a) to an NHS trust which has applied under section 4, or
 - (b) to a public benefit corporation,
- if he is satisfied as to the following matters. 20
- (2) The matters are that –
- (a) the applicant’s constitution will be in accordance with Schedule 1 and will otherwise be appropriate,
 - (b) there will be a board of governors, and a board of directors, constituted in accordance with the constitution, 25
 - (c) the steps necessary to prepare for NHS foundation trust status have been taken,
 - (d) the applicant will be able to provide the goods and services which the authorisation is to require it to provide, and
 - (e) any other requirements which he considers appropriate are met. 30
- (3) The authorisation may be given on any terms the regulator considers appropriate.
- (4) If regulations require the applicant to consult prescribed persons about the application, the regulator may not give an authorisation unless he is satisfied that the applicant has complied with the regulations. 35
- (5) The regulator must send a copy of the authorisation to the registrar of companies.
- (6) The generality of the power in subsection (3) is not affected by the following provisions of this Part.
- 7 Effect of authorisation** 40
- (1) On an authorisation being given to a body corporate which is an NHS trust –
- (a) it ceases to be an NHS trust and becomes an NHS foundation trust,
 - (b) the proposed constitution has effect.

-
- (2) In consequence of subsection (1)(a), any order made under section 5(1) of the 1990 Act (establishment of the NHS trust) is revoked.
- (3) On an authorisation being given to a body corporate which is a public benefit corporation, it becomes an NHS foundation trust.
- (4) The authorisation is conclusive evidence that the body in question is an NHS foundation trust. 5
- (5) Subsections (1) to (3) do not affect the continuity of the body or of its property or liabilities.
- (6) An NHS foundation trust is not to be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown; and the trust's property is not to be regarded as property of, or property held on behalf of, the Crown. 10
- 8 Amendments of constitution**
- (1) An NHS foundation trust may make amendments of its constitution with the approval of the regulator. 15
- (2) An NHS foundation trust must send a copy of its constitution, and any amendment of it, to the registrar of companies.
- 9 Variation of authorisation**
- (1) The regulator may vary an authorisation.
- (2) In deciding whether or not to vary an authorisation the regulator is to have regard (among other things) to— 20
- (a) any report or recommendation made to him by virtue of section 21(2)(f) of the Local Government Act 2000 (c. 22) (overview and scrutiny committees),
- (b) any report or recommendation made to him by the Commission for Patient and Public Involvement in Health under section 20(5)(b) or (6) of the National Health Service Reform and Health Care Professions Act 2002 (c. 17). 25
- (3) The regulator must send a copy of any variation of the authorisation to the registrar of companies. 30
- 10 Register of NHS foundation trusts**
- (1) The registrar of companies must establish and maintain a register of NHS foundation trusts.
- (2) The register must contain in relation to each NHS foundation trust— 35
- (a) a copy of the current constitution,
- (b) a copy of the current authorisation,
- (c) a copy of the latest annual accounts and of any report of the auditor on them,
- (d) a copy of the latest annual report,
- (e) a copy of any notice given under section 23 or 24 (failing NHS foundation trusts). 40

- (3) In relation to any time before an NHS foundation trust is first required to send an annual report to the regulator, the register must contain a list of the persons who, immediately after the authorisation was given to the trust, were –
 - (a) the members of the board of governors,
 - (b) the directors.5
- (4) Sections 707A(2) and (3) and 709 of the Companies Act 1985 (c. 6) (records kept by the registrar of companies) apply to the register as if it were required to be kept by the registrar of companies under that Act.
- (5) *The Secretary of State is to pay any expenses incurred by the registrar of companies by virtue of this section.* 10

Financial matters

11 Power of Secretary of State to give financial assistance

- (1) *The Secretary of State may give financial assistance to any NHS foundation trust.*
- (2) *The financial assistance may be given by way of loan, public dividend capital, grant or other payment.* 15

12 Prudential borrowing code

- (1) The regulator must make a code for determining the limit on the total amount of the borrowing of any NHS foundation trust.
- (2) In making the code the regulator is to have regard (among other things) to any generally accepted principles used by financial institutions to determine the amounts of loans to non-profit making organisations. 20
- (3) Before making the code, the regulator must consult –
 - (a) the Secretary of State,
 - (b) every NHS trust intending to make an application to become an NHS foundation trust,
 - (c) such other persons as the regulator considers appropriate.25
- (4) The regulator must lay a copy of the code before Parliament.
- (5) The regulator may revise the code; and subsections (2) to (4) apply in relation to revising the code, but the regulator must also consult every NHS foundation trust. 30

13 Public dividend capital

- (1) Where an NHS trust becomes an NHS foundation trust, the amount which was the public dividend capital of the trust immediately before the giving of the authorisation continues as public dividend capital of the NHS foundation trust held on the same conditions (“initial public dividend capital”), but subject to this section. 35
- (2) Any amount issued to an NHS foundation trust as public dividend capital under section 11 is (like initial public dividend capital) an asset of the Consolidated Fund.

- (3) The Secretary of State may, with the consent of the Treasury, decide the terms on which any public dividend capital of an NHS foundation trust is to be treated as having been issued.
- (4) But the dividend to be paid by the trust is to be the same as that payable by NHS trusts in England in pursuance of section 9(7) of the 1990 Act (dividend on public dividend capital). 5
- (5) Before exercising the power in subsection (3), the Secretary of State must consult the regulator.
- (6) *Any amount paid to the Secretary of State by an NHS foundation trust by way of repayment of public dividend capital is to be paid into the Consolidated Fund.* 10

Functions

14 Authorised services

- (1) An authorisation must authorise the NHS foundation trust to provide goods and services for the purposes of the health service in England.
- (2) It may also authorise the trust to provide goods and services for other purposes related to the provision of health care, so long as the purpose mentioned in subsection (1) remains the principal purpose. 15
- (3) The authorisation may require the provision, wholly or partly for the purposes of the health service in England, of goods and services by the trust.
- (4) References in this Part to goods and services include, in particular – 20
- (a) education and training,
 - (b) accommodation and other facilities.
- (5) The authorisation may authorise or require the trust –
- (a) to carry out research in connection with the provision of health care,
 - (b) to make facilities and staff available for the purposes of education, training or research carried on by others. 25
- (6) In deciding whether or not to require the trust to provide, wholly or partly for the purposes of the health service in England, any goods or services the regulator is to have regard (among other things) to –
- (a) the need for the provision of goods or services in the area in question, 30
 - (b) any provision of goods or services by other health service bodies in the area in question,
 - (c) any other provision by the trust with which the provision of the goods or services is connected,
 - (d) any agreement or arrangement to which the body corporate which is the trust is or was a party. 35
- (7) Such a requirement as is mentioned in subsection (3) may be framed by reference (among other things) to –
- (a) goods or services in general or of a particular description,
 - (b) goods or services required to meet the needs of health service bodies in general or those of a particular description, 40
 - (c) goods or services required to meet the needs of other persons of a particular description,

- (d) the volume of goods or services provided,
- (e) the place where goods or services are provided,
- (f) the period within which goods or services are provided.

15 Private health care

- (1) An authorisation must restrict the provision, for purposes other than those of the health service in England, of goods and services by an NHS foundation trust which was an NHS trust. 5
- (2) The duty is to be exercised, in particular, with a view to securing that the proportion of the total income of the NHS foundation trust in any financial year derived from private charges is not greater than the proportion of the total income of the NHS trust derived from such charges in the base financial year. 10
- (3) The base financial year means the first financial year throughout which the body corporate was an NHS trust or, if it was an NHS trust throughout the financial year ending with 31st March 2003, that year.
- (4) Private charges means charges imposed in respect of goods and services provided to patients in pursuance of undertakings to pay given by them or on their behalf. 15
- (5) Section 14(7) applies for the purposes of this section.

16 Protection of property

- (1) An NHS foundation trust may not dispose of any protected property without the approval of the regulator. 20
Disposing of property includes disposing of part of it or granting an interest in it.
- (2) Protected property is property of the trust designated as protected in its authorisation. 25
- (3) The regulator may designate property as protected if he considers it is needed for the purposes of any goods or services which the authorisation requires the trust to provide wholly or partly for the purposes of the health service in England.
- (4) The regulator may give approval under subsection (1) on any terms he considers appropriate. 30
- (5) An NHS foundation trust may not create a floating charge on its property.

17 Financial powers

- (1) An NHS foundation trust may borrow money for the purposes of or in connection with its functions. 35
- (2) But the total amount of the trust's borrowing is subject to the limit imposed by its authorisation.
- (3) The limit must be reviewed annually by the regulator.
- (4) An NHS foundation trust may invest money (other than money held by it as trustee) for the purposes of or in connection with its functions. 40

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- (5) The investment may include investment by –
- (a) forming, or participating in forming, bodies corporate,
 - (b) otherwise acquiring membership of bodies corporate.
- (6) An NHS foundation trust may give financial assistance (whether by way of loan, guarantee or otherwise) to any person for the purposes of or in connection with its functions. 5

18 General powers

- (1) An NHS foundation trust may do anything which appears to it to be necessary or desirable for the purposes of or in connection with its functions.
- (2) In particular it may – 10
- (a) acquire and dispose of property,
 - (b) enter into contracts,
 - (c) accept gifts of property (including property to be held on trust for the purposes of the NHS foundation trust or for any purposes relating to the health service in England), 15
 - (d) employ staff.
- (3) Any power of the trust to pay remuneration and allowances to any person includes power to make arrangements for providing, or securing the provision of, pensions or gratuities (including those payable by way of compensation for loss of employment or loss or reduction of pay). 20

19 Information

- (1) An authorisation –
- (a) must require an NHS foundation trust to disclose such information as the Secretary of State specifies to the regulator,
 - (b) may require an NHS foundation trust to disclose other information to the regulator. 25
- (2) The regulator may require any other health service body to disclose any information to him which he requires for the purposes of his functions.

20 Entry and inspection of premises

An authorisation may require an NHS foundation trust to allow the regulator to enter and inspect premises owned or controlled by the trust. 30

21 Fees

An authorisation may require an NHS foundation trust to pay a reasonable annual fee to the regulator.

22 Trust funds and trustees

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- (1) The Secretary of State may by order provide for the appointment of trustees for an NHS foundation trust to hold property on trust –
- (a) for the purposes of the NHS foundation trust, or
 - (b) for any purposes relating to the health service in England.

- (2) The order may –
 - (a) make provision as to the persons by whom trustees are to be appointed and generally as to the method of their appointment,
 - (b) make any appointment subject to such conditions as may be specified in the order (including conditions requiring the consent of the Secretary of State), 5
 - (c) make provision as to the number of trustees to be appointed, including provision under which that number may from time to time be determined by the Secretary of State after consultation with such persons as he considers appropriate, 10
 - (d) make provision with respect to the term of office of any trustee and his removal from office.
- (3) Where trustees have been appointed for an NHS foundation trust under this section, the Secretary of State may by order provide for the transfer of any trust property from the NHS foundation trust to the trustees. 15
- (4) Where an NHS trust for which trustees have been appointed under section 11 of the 1990 Act is given an authorisation, the order appointing the trustees is to have effect as an order under this section.

Failure

- 23 Failing NHS foundation trusts** 20
- (1) If the regulator is satisfied –
 - (a) that an NHS foundation trust is contravening, or failing to comply with, any term of its authorisation or any requirement imposed on it under any enactment and that the contravention or failure is significant, or 25
 - (b) that an NHS foundation trust has contravened, or failed to comply with, any such term or requirement and is likely to do so again and that the contravention or failure was significant,he may by a notice to the trust exercise any one or more of the powers in subsections (3) and (4). 30
 - (2) He may also by a notice to the trust exercise any one or more of those powers if he is satisfied that the trust has contravened or failed to comply with a previous notice.
 - (3) The regulator may require the trust, the directors or the board of governors to do, or not to do, specified things or things of a specified description within a specified period. 35
 - (4) The regulator may remove any or all of the directors or members of the board of governors and appoint interim directors or members of the board.
 - (5) The regulator’s power to remove a director, or member of the board of governors, of the trust includes power to suspend him from office, or to disqualify him from holding office, as a director or member of the board of governors of the trust for a specified period. 40

24 Voluntary arrangements

- (1) If the regulator is satisfied that it is necessary or desirable to do so, he may by a notice to an NHS foundation trust require the directors –
- (a) to take steps to obtain a moratorium, or
 - (b) to make a proposal for a voluntary arrangement. 5
- (2) An order may provide for Part 1 of the Insolvency Act 1986 (c. 45) (company voluntary arrangements) to apply with modifications in relation to NHS foundation trusts; and the references in this Part to a moratorium or voluntary arrangement are to a moratorium under section 1A, or a voluntary arrangement under Part 1, of that Act as modified by the order. 10

25 Dissolution etc.

- (1) The powers conferred by this section are exercisable where –
- (a) an NHS foundation trust contravenes or fails to comply with a notice under section 23 or 24 or the trust’s compliance with a notice under section 24 does not result in the implementation of a voluntary arrangement, and 15
 - (b) the regulator considers that further exercise of any of the powers conferred by those sections would not be likely to secure the provision of the goods and services which the authorisation requires the trust to provide. 20
- (2) Before the powers conferred by this section are exercised, the regulator must consult prescribed persons about prescribed matters.
“Prescribed” means prescribed by an order.
- (3) An order may transfer, or provide for the transfer, of any property or liabilities of the trust to – 25
- (a) another NHS foundation trust,
 - (b) a Primary Care Trust,
 - (c) an NHS trust,
 - (d) the Secretary of State.
- (4) Schedule 3 (which provides for the transfer of employees) has effect. 30
- (5) An order may provide for the dissolution of the trust.
- (6) An order may apply any provision of Part 4 of the Insolvency Act 1986 (winding up of companies), including any related provision of that Act, with modifications.
- (7) Where the regulator refuses to give an authorisation to a public benefit corporation – 35
- (a) the powers conferred by this section are also exercisable,
 - (b) references in this section and Schedule 3 to an NHS foundation trust are to be read as references to the corporation.

26 Sections 23 to 25: supplementary

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- (1) This section applies for the purposes of sections 23 to 25.
- (2) An order means an order made by the Secretary of State.

- (3) The regulator must send a copy of any notice given under section 23 or 24 to the registrar of companies.
- (4) The regulator must give notice of any dissolution of the trust to the registrar of companies.
- (5) The modifications of the Insolvency Act 1986 (c. 45) that may be made by an order include (for example) –
 - (a) provision for securing that the goods and services which the trust is required by the authorisation to provide continue to be provided (whether by the trust or another),
 - (b) provision for securing the protection of property needed for the purposes of those goods and services.

Co-operation

27 Co-operation between NHS bodies

In section 26 of the Health Act 1999 (c. 8) (co-operation between NHS bodies), for “and NHS trusts” there is substituted “, NHS trusts and NHS foundation trusts”. 15

Patient and public involvement

28 Public involvement and consultation

In section 11(2) of the Health and Social Care Act 2001 (c. 15) (public involvement and consultation), at the end there is inserted –
“(d) NHS foundation trusts”. 20

29 Patients’ Forums

- (1) The National Health Service Reform and Health Care Professions Act 2002 (c. 17) is amended as follows.
- (2) In section 16 (additional functions of PCT Patients’ Forums), in subsection (4), after paragraph (c) there is inserted –
 - “(ca) NHS foundation trusts which provide services to patients in the area of the Primary Care Trust,”.
- (3) In section 17 (entry and inspection of premises), in subsection (1), after paragraph (f) there is inserted –
 - “(fa) NHS foundation trusts,”.
- (4) In section 18 (annual reports), in subsection (2), at the end there is inserted –
 - “(e) where the report includes provision which relates to any NHS foundation trust, the Independent Regulator of NHS Foundation Trusts”.

30 Commission for Patient and Public Involvement in Health

In section 20(12) of the National Health Service Reform and Health Care Professions Act 2002 (Commission for Patient and Public Involvement in

Health), in the definition of “health service bodies”, for “and NHS trusts” there is substituted “, NHS trusts and NHS foundation trusts”.

Miscellaneous

31 Taxation

- (1) In section 519A of the Income and Corporation Taxes Act 1988 (c. 1) (taxation of health service bodies), in subsection (2), after paragraph (b) there is inserted –
“*(bb)* an NHS foundation trust”. 5
- (2) Section 61(3) of the 1990 Act (health service bodies: stamp duty) applies to an NHS foundation trust as it applies to an NHS trust. 10
- (3) In section 41 of the Value Added Tax Act 1994 (c. 23) (application to the Crown), in subsection (7), after “1978” there is inserted “an NHS foundation trust”. 10

32 Other amendments relating to NHS foundation trusts

Schedule 4 (which makes amendments relating to NHS foundation trusts) has effect. 15

33 Offence

- (1) A person may not vote at an election for the board of governors of an NHS foundation trust unless, within the specified period, he has made a declaration in the specified form that he is a member of the public constituency or (as the case may be) staff constituency. 20
- (2) A person may not stand for election to the board unless, within the specified period, he has made a declaration in the specified form that he is a member of the trust.
- (3) A person elected to the board may not vote at a general meeting of the board unless, within the specified period, he has made a declaration in the specified form that he is a member of the trust. 25
- (4) Specified means specified for the purpose in the trust’s constitution.
- (5) A person is guilty of an offence if he –
 - (a) makes a declaration under this section which he knows to be false in a material particular, or
 - (b) recklessly makes such a declaration which is false in a material particular.
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- (6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 4 on the standard scale. 35

34 General duty of NHS foundation trusts

An NHS foundation trust must exercise its functions effectively, efficiently and economically.

Supplementary

35 Interpretation of Part 1

- (1) In this Part—
- “the 1990 Act” means the National Health Service and Community Care Act 1990 (c. 19), 5
 - “authorisation” means an authorisation under section 6,
 - “health service body” means a Strategic Health Authority, a Special Health Authority, an NHS trust, an NHS foundation trust or a Primary Care Trust,
 - “the registrar of companies” means the registrar or other officer performing under the Companies Act 1985 (c. 6) the duty of registration of companies in England and Wales, 10
 - “regulations” means regulations made by the Secretary of State.
- (2) Other expressions used in this Part and in the 1977 Act have the same meaning in this Part as in that Act. 15
- (3) Any references in this Part, in relation to property held on trust, to the purposes of an NHS foundation trust are to the general or any specific purposes of the NHS foundation trust (including the purposes of any specific hospital at or from which services are provided by the trust).
- (4) Any references in this Part to goods and services are to be interpreted in accordance with section 14(4). 20

PART 2

STANDARDS

CHAPTER 1

REGULATORY BODIES 25

36 The Commission for Healthcare Audit and Inspection

- (1) There is to be a body corporate known as the Commission for Healthcare Audit and Inspection (in this Part referred to as the CHAI).
- (2) Schedule 5 (which makes further provision about the CHAI) has effect.

37 The Commission for Social Care Inspection 30

- (1) There is to be a body corporate known as the Commission for Social Care Inspection (in this Part referred to as the CSCI).
- (2) Schedule 6 (which makes further provision about the CSCI) has effect.

38 Transfer of property etc to CHAI and CSCI

Schedule 7 (which makes provision for the transfer of property, rights and liabilities to the CHAI and the CSCI) has effect. 35

39 Abolition of former regulatory bodies

- (1) The Commission for Health Improvement is abolished.
- (2) The National Care Standards Commission is abolished.

CHAPTER 2

NHS HEALTH CARE: INTRODUCTORY

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40 Quality in health care

- (1) It is the duty of each NHS body to put and keep in place arrangements for the purpose of monitoring and improving the quality of health care provided by and for that body.
- (2) In this Part “health care” means— 10
 - (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.
- (3) In subsection (2)(a), “illness” has the meaning given by section 128(1) of the 1977 Act. 15

41 Standards set by Secretary of State

- (1) The Secretary of State may prepare and publish statements of standards in relation to the provision of health care by and for English NHS bodies and cross-border SHAs.
- (2) The Secretary of State must keep the standards under review and may publish amended statements whenever he considers it appropriate. 20
- (3) The Secretary of State must consult such persons as he considers appropriate— 25
 - (a) before publishing a statement under this section;
 - (b) before publishing an amended statement under this section which in the opinion of the Secretary of State effects a substantial change in the standards.
- (4) The standards set out in statements under this section are to be taken into account by every English NHS body and cross-border SHA in discharging its duty under section 40.

42 Standards set by Assembly

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- (1) The Assembly may prepare and publish statements of standards in relation to the provision of health care by and for Welsh NHS bodies.
- (2) The Assembly must keep the standards under review and may publish amended statements whenever it considers it appropriate.
- (3) The Assembly must consult such persons as it considers appropriate— 35
 - (a) before publishing a statement under this section;
 - (b) before publishing an amended statement under this section which in the opinion of the Assembly effects a substantial change in the standards.

- (4) The standards set out in statements under this section are to be taken into account by every Welsh NHS body in discharging its duty under section 40.

CHAPTER 3

NHS HEALTH CARE: FUNCTIONS OF CHAI

General functions 5

43 Information and advice

- (1) The CHAI is to keep the appropriate authority informed about the provision of health care by and for any NHS body.
- (2) The CHAI may at any time give advice to the appropriate authority on any matter connected with the provision of such health care (including, in particular, advice on any changes which it thinks should be made to the standards under section 41 or 42 for the purpose of securing improvement in the quality of the health care). 10
- (3) When requested to do so by the appropriate authority, the CHAI must give the authority advice or information on such matters connected with the provision of health care by or for any NHS body as may be specified in the request. 15
- (4) The CHAI may give advice to the appropriate authority or any NHS body about the establishment or conduct of any inquiry held, or to be held, by the authority or the body in relation to the provision of health care by or for that body. 20
- (5) In this section, the “appropriate authority” means –
- (a) the Secretary of State, in relation to the provision of health care by or for an English NHS body or cross-border SHA; or
 - (b) the Assembly, in relation to the provision of health care by or for a Welsh NHS body. 25

44 Reviews of data

- (1) The CHAI may review –
- (a) the quality of data obtained by others in relation to the provision of health care by and for NHS bodies;
 - (b) the methods used in the collection and analysis of such data; and
 - (c) the validity of conclusions drawn from such data. 30
- (2) Where the CHAI conducts a review under this section it must publish such report as it considers appropriate.

Functions relating to NHS foundation trusts

45 Information and advice

- (1) The CHAI is to keep the regulator informed about the provision of health care which is provided by and for NHS foundation trusts. 35

- (2) The CHAI may at any time give advice to the regulator on any matter connected with the provision of health care by or for an NHS foundation trust.
- (3) The CHAI may, at the request of an NHS foundation trust, give it advice or information on any matter connected with the provision of health care by or for the trust.

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46 Annual reviews of NHS foundation trusts

- (1) In each financial year the CHAI must conduct a review of the provision of health care by and for each NHS foundation trust and award a performance rating to each one.
- (2) The CHAI is to exercise its function under this section by reference to—
- (a) criteria from time to time devised by it and approved by the Secretary of State; and
 - (b) the standards set out in statements published under section 41.
- (3) The CHAI must publish the criteria devised and approved from time to time under subsection (2)(a).
- (4) For the purposes of this section the CHAI may, subject to this Part, conduct an inspection of—
- (a) the NHS foundation trust being reviewed; and
 - (b) any person who provides, or is to provide, health care for that body (wherever the health care is provided).

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47 Other reviews and investigations

- (1) The CHAI has the function of conducting reviews of the extent to which an NHS foundation trust complies with—
- (a) the terms of its authorisation;
 - (b) any requirement imposed on it by or under an enactment; and
 - (c) the terms of any arrangement under which the trust provides health care for another NHS body.
- (2) The CHAI may in a review under subsection (1)—
- (a) assess performance against criteria;
 - (b) award performance ratings.
- (3) Where an NHS foundation trust has contravened, or failed to comply with, any of the matters referred to in subsection (1) (or is alleged to have done so), the CHAI may investigate the failure.
- (4) For the purposes of this section the CHAI may, subject to this Part, conduct an inspection of—
- (a) an NHS foundation trust;
 - (b) any person who provides, or is to provide, health care for an NHS foundation trust (wherever the health care is or is to be provided).
- (5) Where the CHAI conducts a review or investigation under this section it must publish such report as it considers appropriate.
- (6) An NHS foundation trust must, if regulations so provide, publish a statement as to the action it proposes to take as a result of any review or investigation conducted under this section in relation to it.

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- (7) The CHAI must, on request, provide the Comptroller and Auditor General with all material relevant to a review or investigation under this section.
- (8) The regulator and the CHAI must co-operate with each other in the exercise of their respective functions under Part 1 and this section.
- 48 Failures in compliance** 5
- (1) This section applies where the CHAI conducts –
- (a) a review under section 46; or
 - (b) a review or investigation under section 47(1) or (3).
- (2) The CHAI must report to the regulator if it is of the view that –
- (a) an NHS foundation trust is to a significant extent contravening, or failing to comply with, any term of its authorisation or any requirement imposed on it under this Act or any other enactment; or 10
 - (b) an NHS foundation trust has to a significant extent contravened, or failed to comply with, any such term or requirement and is likely to do so again. 15
- (3) The report may include a recommendation that the regulator take measures in relation to the NHS foundation trust with a view to remedying the failure.
- (4) A report under this section must give the CHAI’s reasons for its view and for any recommendation under subsection (3).
- Healthcare provided by and for other NHS bodies* 20
- 49 Introductory**
- (1) The CHAI has the function of encouraging improvement in the provision of health care by and for NHS bodies, other than NHS foundation trusts.
- (2) In exercising its functions under sections 50 to 54 in relation to such provision, the CHAI shall be concerned in particular with – 25
- (a) the availability of, and access to, the health care;
 - (b) the quality and effectiveness of the health care;
 - (c) the financial or other management of the health care and the economy and efficiency of its provision;
 - (d) the need to safeguard and promote the rights and welfare of children; and 30
 - (e) the effectiveness of measures taken for the purpose of paragraph (d) by the body in question and any person who provides, or is to provide, health care for that body.
- 50 National performance data** 35
- The CHAI has the function of publishing data relating to the provision of health care by and for NHS bodies, other than NHS foundation trusts.
- 51 Annual reviews**
- (1) In each financial year the CHAI must conduct a review of the provision of health care by and for – 40

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- (a) each English NHS body, other than an NHS foundation trust, and
 (b) each cross-border SHA,
 and must award a performance rating to each such body.
- (2) The CHAI is to exercise its function under this section by reference to criteria from time to time devised by it and approved by the Secretary of State. 5
- (3) The CHAI must publish the criteria devised and approved from time to time under subsection (2).
- (4) In exercising its functions under this section in relation to any health care the CHAI must take into account the standards set out in statements published under section 41. 10
- (5) For the purposes of this section the CHAI may, subject to this Part, conduct an inspection of—
 (a) the body being reviewed; and
 (b) any person who provides, or is to provide, health care for that body (wherever the health care is or is to be provided). 15
- (6) Subsection (1) does not apply in relation to any health care provided for an English NHS body or cross-border SHA by an NHS foundation trust.
- 52 National reviews**
- (1) The CHAI has the function of conducting reviews into—
 (a) the overall provision of particular kinds of health care by and for NHS bodies, other than NHS foundation trusts; 20
 (b) the provision of health care, or a particular kind of health care, by and for NHS bodies, other than NHS foundation trusts, of a particular description.
- (2) For the purposes of this section the CHAI may, subject to this Part, conduct an inspection of—
 (a) any NHS body; and
 (b) any person, other than an NHS foundation trust, who provides, or is to provide, health care for an NHS body (wherever the health care is provided). 25
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- (3) Where the CHAI conducts a review under this section it must publish such report as it considers appropriate.
- (4) The CHAI must, on request, provide the Comptroller and Auditor General with all material relevant to a review or investigation under this section.
- 53 Other reviews and investigations** 35
- (1) The CHAI has the function of conducting other reviews of, and investigations into, the provision of health care by or for—
 (a) an English NHS body, other than an NHS foundation trust;
 (b) a cross-border SHA.
- (2) The CHAI has the function of conducting reviews of the arrangements made by—
 (a) an English NHS body, other than an NHS foundation trust, or
 (b) a cross-border SHA, 40

for the purposes of discharging its duty under section 40.

- (3) If the Secretary of State so requests, the CHAI must conduct a review or investigation under this section in relation to the provision of such health care by or for such English NHS body or cross-border SHA as may be specified in the request. 5
- (4) In exercising its functions under this section in relation to any health care the CHAI must take into account the standards set out in statements published under section 41.
- (5) For the purposes of this section the CHAI may, subject to this Part, conduct an inspection of— 10
 - (a) the NHS body in question; and
 - (b) any person, other than an NHS foundation trust, who provides, or is to provide, health care for that body (wherever the health care is or is to be provided).
- (6) Where the CHAI conducts a review or investigation under this section it must publish such report as it thinks appropriate. 15
- (7) An NHS body must, if regulations so provide, publish a statement as to the action it proposes to take as a result of any review or investigation conducted under this section in relation to it.
- (8) The CHAI must, on request, provide the Comptroller and Auditor General with all material relevant to a review or investigation under this section. 20
- (9) Subsection (1) does not apply in relation to any health care provided for an English NHS body or cross-border SHA by an NHS foundation trust.

54 Failings

- (1) This section applies where the CHAI conducts— 25
 - (a) a review under section 51 or 52; or
 - (b) a review or investigation under section 53.
- (2) The CHAI must make a report to the Secretary of State if it is of the view that—
 - (a) there are significant failings in relation to the provision of health care by or for an English NHS body or cross-border SHA; 30
 - (b) there are significant failings in the running of an English NHS body or cross-border SHA;
 - (c) there are significant failings in the running of any person, or the practice of any individual, providing health care for an English NHS body or cross-border SHA. 35
- (3) A report made to the Secretary of State under subsection (2) may include a recommendation that, with a view to remedying the failings in question, the Secretary of State take special measures in relation to—
 - (a) in a case falling within paragraph (a) or (b) of subsection (2), the English NHS body or cross-border SHA in question; 40
 - (b) in a case falling within paragraph (c) of that subsection, any person other than a Welsh NHS body, referred to in that paragraph.
- (4) The CHAI must also report to the Assembly where it is of the view that—
 - (a) there are significant failings in relation to the provision of health care by or for a Welsh NHS body; 45

<ul style="list-style-type: none"> (b) there are significant failings in the running of a Welsh NHS body; (c) there are significant failings in the running of any other person, or the practice of any individual, providing health care for a Welsh NHS body. 	5
<ul style="list-style-type: none"> (5) A report made to the Assembly under subsection (4) may include a recommendation that, with a view to remedying the failings in question, the Assembly take special measures in relation to – <ul style="list-style-type: none"> (a) in a case falling within paragraph (a) or (b) of subsection (4), the Welsh NHS body in question; and (b) in a case falling within paragraph (c) of that subsection, any person, other than an English NHS body or cross-border SHA, referred to in that paragraph. 	10
<ul style="list-style-type: none"> (6) A report under this section must give the CHAI’s reasons for its view and for any recommendation made. 	15
<i>Other functions</i>	15
55 Co-ordination of reviews	
<p>The CHAI may promote the effective co-ordination of reviews or assessments carried out by public bodies or other persons in relation to the provision of health care by or for English NHS bodies and cross-border SHAs.</p>	
56 Studies as to economy, efficiency etc	
<ul style="list-style-type: none"> (1) The CHAI has the general function of promoting or undertaking comparative or other studies designed to enable it to make recommendations – <ul style="list-style-type: none"> (a) for improving economy, efficiency and effectiveness in the exercise of any of the functions of any of the following bodies (whether the functions are exercised by that body or another person) – <ul style="list-style-type: none"> (i) a Primary Care Trust; (ii) a Strategic Health Authority; (iii) an NHS trust all or most of whose hospitals, establishments and facilities are situated in England; (b) for improving the financial or other management, or operations, of such a body. 	25
<ul style="list-style-type: none"> (2) The CHAI may exercise its function under subsection (1) in relation to a body on the CHAI’s own initiative or at the request of the body concerned. 	30
<ul style="list-style-type: none"> (3) The CHAI must publish or otherwise make available at least a summary of the result of any studies under this section. 	35
<ul style="list-style-type: none"> (4) The CHAI must, on request, provide the Comptroller and Auditor General with all material relevant to studies under this section. 	35
<ul style="list-style-type: none"> (5) The CHAI’s functions under this section may be exercised on its behalf by the Audit Commission, if the Audit Commission and the CHAI so agree. 	35
<ul style="list-style-type: none"> (6) Where the Audit Commission exercises functions under subsection (5), it shall do so on such terms, including terms as to payment, as the CHAI and the Audit Commission may agree. 	40

57 Additional functions

- (1) The Secretary of State may by regulations provide that the CHAI is to have such additional functions as may be prescribed in relation to—
 - (a) the provision of health care by or for NHS bodies;
 - (b) the improvement of—
 - (i) economy, efficiency and effectiveness in the exercise of the functions of English NHS bodies; and
 - (ii) the financial or other management, or operations, of English NHS bodies.5
- (2) The Secretary of State must obtain the consent of the regulator before making provision under subsection (1) in relation to NHS foundation trusts. 10
- (3) The Secretary of State must obtain the consent of the Assembly before making provision under subsection (1)(a) in relation to health care provided by or for a Welsh NHS body (other than health care provided by or for an English NHS body or cross-border SHA). 15

Exercise of functions: general

58 Considerations and criteria

- (1) In exercising its functions under this Chapter the CHAI must have regard to such aspects of government policy as the Secretary of State may direct in writing. 20
- (2) A direction given under subsection (1) or (2) may be varied or revoked by a further such direction.
- (3) The Secretary of State may, after consulting the CHAI, make regulations requiring the CHAI—
 - (a) to devise and publish statements of the criteria to be used in the exercise of any of its functions under this Chapter (other than under sections 46 and 51); and
 - (b) to obtain the consent of the Secretary of State before publishing any such statement. 25

59 Failure in discharge of functions

- (1) Where the Secretary of State considers that the CHAI is to a significant extent—
 - (a) failing to discharge any of its functions under this Chapter, or
 - (b) failing properly to discharge any of those functions;he may give a direction in writing to the CHAI. 30
- (2) The CHAI must comply with any such direction. 35
- (3) A direction given under this section may be varied or revoked by a further such direction.

Supplementary

60 Fees

- (1) The CHAI may from time to time make and publish provision requiring a person or body to whom this section applies to pay a fee in respect of the exercise by CHAI, in relation to that person or body, of such of its reviewing and investigating functions under this Chapter as may be specified in regulations made by the Secretary of State. 5
- (2) This section applies to –
- (a) any English NHS body;
 - (b) any cross-border SHA; and
 - (c) any other person of a description specified in regulations made by the Secretary of State. 10
- (3) The amount of a fee payable under provision under subsection (1) shall be such as may be specified in, or calculated or determined under, the provision.
- (4) Provision under subsection (1) may include provision – 15
- (a) for different fees to be paid in different cases, or classes of case;
 - (b) for different fees to be paid by persons of different descriptions;
 - (c) for the amount of a fee to be determined by the CHAI in accordance with specified factors.
- (5) Before making any provision under subsection (1) the CHAI must consult such persons as appear to it appropriate. 20
- (6) The Secretary of State may by regulations make provision as to –
- (a) the manner in which provision under subsection (1) is to be made and published;
 - (b) the matters to be taken into account by the CHAI before making the provision. 25
- (7) The Secretary of State may by regulations make provision for an independent person or panel to review the amount charged under subsection (1) in any particular case and, if that person or panel thinks fit, to substitute a lesser amount for that amount. 30
- (8) The Secretary of State must obtain the consent of the Assembly before specifying a Welsh NHS body under subsection (2)(c).
- (9) For the purpose of determining the fee payable by a person or body under subsection (1), the person or body must provide the CHAI with such information, in such form, as the CHAI may require. 35

61 Reports and information

- (1) The CHAI must make copies of any report published by it under this Chapter available for inspection at its offices by any person at any reasonable time.
- (2) Any person who requests a copy of such a report is entitled to have one on payment of such reasonable fee (if any) as the CHAI considers appropriate. 40
- (3) The CHAI may charge a person such reasonable fee as it considers appropriate where it provides him, at his request, with any other information relevant to the discharge of the CHAI's functions under this Chapter.

62 Right of entry

- (1) A person authorised to do so by the CHAI may, if the CHAI considers it necessary or expedient for the purposes of this Chapter, at any reasonable time enter and inspect any –
 - (a) premises owned or controlled by an NHS body; 5
 - (b) any other premises used, or proposed to be used, for any purpose connected with –
 - (i) the provision of health care by or for an NHS body, or
 - (ii) the discharge of any of the functions of an NHS body.
- (2) A person who proposes to exercise any power of entry or inspection conferred by this section must if so required produce some duly authenticated document showing his authority to exercise the power. 10

63 Right of entry: supplementary

- (1) A person authorised by virtue of section 62 to enter and inspect premises may, if he considers it necessary or expedient for the purposes of this Chapter –
 - (a) inspect and take copies of any documents or records (including personal records); 15
 - (b) inspect any other item and remove it from the premises; and
 - (c) interview in private –
 - (i) any person working at the premises; 20
 - (ii) any person receiving health care there who consents to be interviewed
- (2) The power in subsection (1)(a) includes –
 - (a) power to require any person holding or accountable for documents or records kept on the premises to produce them; and 25
 - (b) in relation to records which are kept by means of a computer, power to require the records to be produced in a form in which they are legible and can be taken away.
- (3) A person authorised by virtue of subsection (1)(a) to inspect any records is entitled to have access to, and to check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the records in question. 30
- (4) A person authorised by virtue of section 62 to enter any premises may –
 - (a) require any person to afford him such facilities and assistance with respect to matters within the person’s control as are necessary to enable him to exercise his powers under section 62 or this section; and 35
 - (b) take such measurements and photographs and make such recordings as he considers necessary to enable him to exercise those powers.
- (5) Any person who without reasonable excuse –
 - (a) obstructs the exercise of any power conferred by section 62 or this section, or 40
 - (b) fails to comply with any requirement of section 62 or this section, is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

64 Power to require documents and information etc

- (1) The CHAI may at any time require any person specified in subsection (2) to provide it with any information, documents, records (including personal records) or other items –
- (a) which relates or relate to –
 - (i) the provision of health care by or for an NHS body, or
 - (ii) the discharge of any of the functions of an NHS body; and
 - (b) which the CHAI considers it necessary or expedient to have for the purposes of this Chapter.
- 5
- (2) The persons referred to in subsection (1) are –
- (a) the NHS body;
 - (b) any person providing health care for, or exercising functions of, the NHS body;
 - (c) a local authority.
- 10
- (3) The power in subsection (1) to require the provision of records includes, in relation to records kept by means of a computer, power to require the provision of the records in legible form.
- 15
- (4) Any person who without reasonable excuse fails to comply with any requirement imposed by virtue of this section is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.
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65 Power to require explanation

- (1) The Secretary of State may by regulations make provision requiring prescribed persons to provide to the CHAI, or to persons authorised by it, an explanation of –
- (a) any documents, records or items inspected, copied or provided under sections 62 to 64,
 - (b) any information provided under those sections, or
 - (c) any matters which are the subject of the exercise of any functions of the CHAI under this Chapter,
- in circumstances where the CHAI considers the explanation necessary or expedient for the purposes of this Chapter.
- 30
- (2) Regulations under subsection (1) may require explanations to be provided at such times and places as may be prescribed.
- (3) Any person who without reasonable excuse fails to comply with any requirement imposed by virtue of this section is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.
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CHAPTER 4

NHS HEALTH CARE: FUNCTIONS OF NATIONAL ASSEMBLY FOR WALES

Reviews and investigations

66 Reviews and investigations relating to Wales

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- (1) The Assembly has the function of conducting –

- (a) reviews of, and investigations into, the provision of health care by a Welsh NHS body;
 - (b) reviews of, and investigations into, the provision of health care for a Welsh NHS body, otherwise than by an NHS foundation trust;
 - (c) reviews into the arrangements made by Welsh NHS bodies for the purpose of discharging their functions under section 40. 5
- (2) In exercising its functions under subsection (1) in relation to any health care the Assembly shall be concerned in particular with –
 - (a) the availability of, and access to, the health care;
 - (b) the quality and effectiveness of the health care; 10
 - (c) the financial or other management of the health care and the economy and efficiency of its provision;
 - (d) the need to safeguard and promote the rights and welfare of children; and
 - (e) the effectiveness of measures taken for the purpose specified in paragraph (d) by the body in question and any person who provides, or is to provide, health care for that body, 15and must take into account the standards set out in statements published under section 42.
- (3) For the purposes of subsection (1) the Assembly may, subject to this Part, conduct an inspection of – 20
 - (a) any Welsh NHS body;
 - (b) any other person, other than an NHS foundation trust, who provides, or is to provide, health care for a Welsh NHS body (in Wales or elsewhere). 25
- (4) Where the Assembly conducts a review under this section it must publish such report as it considers appropriate.

67 Reporting to Secretary of State

- (1) The Assembly must report to the Secretary of State where, after conducting a review or investigation under section 66, it is of the view that – 30
 - (a) there are significant failings in relation to the provision of health care by or for an English NHS body or cross-border SHA; or
 - (b) there are significant failings in the running of an English NHS body or cross-border SHA;
 - (c) there are significant failings in the running of any body, or the practice of any individual, providing health care for an English NHS body or cross-border SHA. 35
- (2) A report under subsection (1) may include a recommendation that, with a view to remedying the failings, the Secretary of State take special measures in relation to – 40
 - (a) the English NHS body or cross-border SHA; and
 - (b) in a case falling within paragraph (c) of subsection (1), any person, other than a Welsh NHS body, referred to in that paragraph.
- (3) A report under this section must give the Assembly’s reasons for its view and for any recommendation made. 45

Ancillary powers

68 Right of entry

- (1) A person authorised to do so by the Assembly may, if the Assembly considers it necessary or expedient for the purposes of this Chapter, at any reasonable time enter and inspect any – 5
- (a) premises owned or controlled by a Welsh NHS body;
 - (b) any other premises used, or proposed to be used, for any purpose connected with –
 - (i) the provision of health care by or for a Welsh NHS body; or
 - (ii) the discharge of any of the functions of a Welsh NHS body. 10
- (2) A person who proposes to exercise any power of entry or inspection conferred by this section must if so required produce some duly authenticated document showing his authority to exercise the power.

69 Right of entry: supplementary

- (1) A person authorised by virtue of section 68 to enter and inspect premises may, if he considers it necessary or expedient for the purposes of this Chapter – 15
- (a) inspect and take copies of any documents or records (including personal records);
 - (b) inspect any other item and remove it from the premises; and
 - (c) interview in private – 20
 - (i) any person working at the premises;
 - (ii) any person receiving health care there who consents to be interviewed.
- (2) The power in subsection (1)(a) includes – 25
- (a) power to require any person holding or accountable for documents or records kept on the premises to produce them; and
 - (b) in relation to records which are kept by means of a computer, power to require the records to be produced in a form in which they are legible and can be taken away.
- (3) A person authorised by virtue of subsection (1)(a) to inspect any records is entitled to have access to, and to check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the records in question. 30
- (4) A person authorised by virtue of section 68 to enter any premises may – 35
- (a) require any person to afford him such facilities and assistance with respect to matters within the person’s control as are necessary to enable him to exercise his powers under section 68 or this section; and
 - (b) take such measurements and photographs and make such recordings as he considers necessary to enable him to exercise those powers.
- (5) Any person who without reasonable excuse – 40
- (a) obstructs the exercise of any power conferred by section 68 or this section, or
 - (b) fails to comply with any requirement of section 68 or this section,
- is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale. 45

70 Power to require documents and information

- (1) The Assembly may at any time require any person specified in subsection (2) to provide it with any information, documents, records (including personal records) or other items –
 - (a) which relates or relate to –
 - (i) the provision of health care by or for a Welsh NHS body; or
 - (ii) the discharge of any of the functions of a Welsh NHS body; and
 - (b) which the Assembly considers it necessary or expedient to have for the purposes of this Chapter.

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- (2) The persons referred to in subsection (1) are –
 - (a) the Welsh NHS body;
 - (b) any person providing health care for, or exercising functions of, the Welsh NHS body;
 - (c) a local authority in Wales.

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- (3) The power in subsection (1) to require the provision of records includes, in relation to records kept by means of a computer, power to require the provision of the records in legible form.

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- (4) Any person who without reasonable excuse fails to comply with any requirement imposed by virtue of this section is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

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71 Power to require explanation

- (1) The Assembly may by regulations make provision requiring prescribed persons to provide to the Assembly, or to persons authorised by it, an explanation of –
 - (a) any documents, records or items inspected, copied or provided under sections 68 to 70,
 - (b) any information provided under those sections, or
 - (c) any matters which are the subject of the exercise of any function of the Assembly under section 66, and

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in circumstances where the Assembly considers the explanation necessary or expedient for the purposes of this Chapter.

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- (2) Regulations under subsection (1) may require explanations to be provided at such times and places as may be prescribed.
- (3) Any person who without reasonable excuse fails to comply with any requirement imposed by virtue of this section is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

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CHAPTER 5

SOCIAL SERVICES: FUNCTIONS OF CSCI

Provision of social services

72 Introductory

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| (1) The CSCI has the general function of encouraging improvement in the provision of English local authority social services. | 5 |
| (2) In exercising its functions under sections 73 to 77 in relation to the provision of such services the CSCI shall be concerned in particular with— | |
| (a) the availability of, and access to, the services; | |
| (b) the quality and effectiveness of the services; | 10 |
| (c) the management of the services; | |
| (d) the economy and efficiency of their provision and their value for money; | |
| (e) the need to safeguard and promote the rights and welfare of children; and | 15 |
| (f) the effectiveness of measures taken by local authorities for the purpose specified in paragraph (e). | |

73 Information and advice

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| (1) The CSCI is to keep the Secretary of State informed about the provision of English local authority social services. | 20 |
| (2) The CSCI may at any time give advice to the Secretary of State on any matter connected with the provision of English local authority social services. | |
| (3) The CSCI may in particular under subsection (2) give advice to the Secretary of State on any changes which it thinks should be made, for the purpose of securing improvement in the quality of services provided by local authorities in England in the exercise of the functions referred to in section 43(3)(a) and (b) of the Care Standards Act 2000 (c. 14) (adoption and fostering functions). | 25 |
| (4) When requested to do so by the Secretary of State, the CSCI must give him advice or information on such matters connected with the provision of English local authority social services as may be specified in the request. | 30 |
| (5) The CSCI may give advice to the Secretary of State or any local authority in England about the establishment or conduct of any inquiry held, or to be held, by the Secretary of State or the authority in relation to the provision of English local authority social services. | |

74 Review of studies and research

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| (1) The CSCI may review— | |
| (a) studies and research undertaken by others in relation to the provision of English local authority social services; | |
| (b) the methods used in such studies and research; and | |
| (c) the validity of the conclusions drawn from such studies and research. | 40 |

- (2) Where the CSCI conducts a review under this section it must publish such report as it thinks appropriate.

75 Annual reviews and investigations

- (1) In each financial year the CSCI must conduct a review of the English local authority social services which are provided by, or pursuant to arrangements made by, each local authority in England. 5
- (2) After conducting a review under subsection (1) in respect of a local authority the CSCI must award a performance rating to that authority.
- (3) The CSCI is to exercise its function under this section by reference to criteria from time to time devised by it and approved by the Secretary of State. 10
- (4) The CSCI must publish the criteria devised and approved from time to time under subsection (3).
- (5) In exercising its function under this section the CSCI must take into account guidance issued to local authorities under section 7 of the Local Authority Social Services Act 1970 (c. 42). 15
- (6) In exercising its function under this section in relation to the functions referred to in section 43(3)(a) and (b) of the Care Standards Act 2000 (c. 14) (adoption and fostering functions), the CSCI must take into account the standards prepared and published from time to time under section 23 of that Act.
- (7) For the purposes of this section, the CSCI may carry out an inspection of— 20
- (a) the local authority being reviewed;
 - (b) any person providing an English local authority social service pursuant to arrangements made by the authority.

76 Other reviews and investigations

- (1) The CSCI has the function of conducting other reviews of, and investigations into, the provision of English local authority social services. 25
- (2) The CSCI may in particular under this section conduct—
- (a) a review of the overall provision of English local authority social services;
 - (b) a review of the provision of any English local authority social service of a particular description; or 30
 - (c) a review of, or investigation into, the provision of any English local authority social service by a particular person or persons.
- (3) If the Secretary of State so requests, the CSCI must conduct a review under this section in relation to— 35
- (a) the provision by such local authority in England of such services as may be specified in the request; and
 - (b) the provision pursuant to arrangements made by such local authority in England of such services as may be so specified.
- (4) In exercising its functions under this section the CSCI must take into account guidance issued to local authorities under section 7 of the Local Authority Social Services Act 1970. 40

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- (5) In exercising its function under this section in relation to the functions referred to in section 43(3)(a) and (b) of the Care Standards Act 2000 (c. 14) (adoption and fostering functions), the CSCI must take into account the standards prepared and published from time to time under section 23 of that Act.
- (6) For the purposes of this section, the CSCI may carry out an inspection of— 5
- (a) any local authority in England;
 - (b) any other person providing an English local authority social service.
- (7) Where the CSCI conducts a review or investigation under this section, it must publish such report as it thinks appropriate.
- 77 Failings** **10**
- (1) This section applies where the CSCI conducts—
- (a) a review under section 75; or
 - (b) a review or investigation under section 76.
- (2) If under section 75 the CSCI awards the lowest performance rating to a local authority, the CSCI must— 15
- (a) inform the Secretary of State of that fact; and
 - (b) recommend any special measures which it considers the Secretary of State should take.
- (3) If (in a case where subsection (2) does not apply) the CSCI considers that a local authority in England is failing to discharge any of its social services functions to an acceptable standard, it must— 20
- (a) inform the Secretary of State of that fact; and
 - (b) recommend any special measures which it considers the Secretary of State should take.
- (4) However, in a case falling within subsection (3), if the CSCI considers that the failure is not substantial, it may instead— 25
- (a) give the local authority a notice under subsection (5); and
 - (b) inform the Secretary of State that it has done so.
- (5) A notice under this subsection is a notice which specifies— 30
- (a) the respects in which the CSCI considers that the local authority is failing;
 - (b) the action which the CSCI considers the authority should take to remedy the failure; and
 - (c) the time by which such action must be taken.
- (6) Where under subsection (2)(b) or (3)(b) the CSCI has recommended that the Secretary of State take special measures in relation to a local authority, the CSCI must, if the Secretary of State so requests— 35
- (a) undertake a further review under section 76 in relation to the authority; and
 - (b) include in its report under subsection (5) of that section a report on such matters as the Secretary of State may specify. 40

Audit functions

78 Studies as to economy, efficiency etc

- (1) The CSCI may promote or undertake comparative or other studies designed to enable it to make recommendations –
 - (a) for improving economy, efficiency and effectiveness in the discharge by local authorities in England of their social services functions; 5
 - (b) for improving the management of such local authorities in their discharge of those functions.
- (2) The CSCI may also promote or undertake studies designed to enable it to prepare reports as to the impact of –
 - (a) the operation of any particular statutory provisions, or
 - (b) any directions or guidance given by a Minister of the Crown (whether pursuant to any such provision or otherwise),on economy, efficiency and effectiveness in the discharge by local authorities in England of their social services functions. 10
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- (3) The CSCI must publish or otherwise make available –
 - (a) any recommendations made by it under subsection (1);
 - (b) at least a summary of the result of any studies under this section.

79 Joint working with Audit Commission

- (1) The CSCI and the Audit Commission may (without prejudice to any other power they may have to do so) exercise jointly their respective functions under section 78 and sections 33 and 34 of the Audit Commission Act 1998 (c. 18). 20
- (2) The CSCI and the Audit Commission must co-operate with each other with respect to the exercise of their respective functions under section 78 and sections 33 and 34 of the Audit Commission Act 1998. 25
- (3) The CSCI and the Audit Commission must take into account any guidance given to them by the Secretary of State with respect to the exercise of their respective functions under section 78 and sections 33 and 34 of the Audit Commission Act 1998.

Additional functions

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80 Additional functions

The CSCI is to have such additional functions as may be prescribed in relation to the provision of English local authority social services.

Exercise of functions: general

81 General considerations

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- (1) In exercising its functions under this Chapter the CSCI must have regard to such aspects of government policy as the Secretary of State may direct.
- (2) The Secretary of State may, after consulting the CSCI, make regulations requiring the CSCI –

- (a) to devise and publish statements of the criteria to be used in the exercise of any of its functions under this Chapter (other than section 75); and
- (b) to obtain the consent of the Secretary of State before publishing any such statement.

82 Failure in discharge of functions 5

- (1) Where the Secretary of State considers that the CSCI is to a significant extent –
 - (a) failing to discharge any of its functions under this Chapter, or
 - (b) failing properly to discharge any of those functions,
 he may give it a direction in writing.
- (2) The CSCI must comply with any such direction. 10
- (3) A direction given under this section may be varied or revoked by a further such direction.

Supplementary

83 Fees

- (1) The CSCI may from time to time make and publish provision requiring a local authority in England to pay a fee in respect of the exercise by the CSCI, in relation to that authority, of such of its functions under section 75, 76 or 78 as may be prescribed. 15
- (2) The amount of a fee payable by virtue of provision under subsection (1) shall be such as may be specified in, or calculated or determined under, the provision. 20
- (3) Provision under subsection (1) may include provision –
 - (a) for different fees to be paid in different cases, or classes of case;
 - (b) for different fees to be paid by persons of different descriptions;
 - (c) for the amount of a fee to be determined by the CSCI in accordance with specified factors. 25
- (4) The Secretary of State may by regulations make provision as to –
 - (a) the manner in which provision under subsection (1) is to be made and published;
 - (b) the matters to be taken into account by the CSCI before making the provision. 30
- (5) Before making any provision under subsection (1) the CSCI must consult such persons as appear to it appropriate.
- (6) The Secretary of State may by regulations make provision for an independent person or panel to review the amount chargeable under subsection (1) in any particular case and, if that person or panel thinks fit, to substitute a lesser amount for that amount. 35
- (7) For the purpose of determining the fee payable by a local authority under subsection (1) it must provide the CSCI with such information, in such form, as the CSCI may require. 40

84 Reports and information

- (1) The CSCI must make copies of any report published by it under this Chapter available for inspection at its offices by any person at any reasonable time.
- (2) Any person who requests a copy of such a report is entitled to have one on payment of such reasonable fee (if any) as the CSCI considers appropriate. 5
- (3) The CSCI may charge a person such reasonable fee as it considers appropriate where it provides him, at his request, with any other information relevant to the discharge of the CSCI's functions under this Chapter.

85 Right of entry

- (1) A person authorised to do so by the CSCI may, if the CSCI considers it necessary or expedient for the purposes of this Chapter, at any reasonable time enter and inspect –
 - (a) any premises owned or controlled by a local authority in England; or
 - (b) any premises falling within subsection (2), other than premises used wholly or mainly as a private dwelling. 15
- (2) The premises referred to in subsection (1)(b) are premises –
 - (a) which are used, or proposed to be used, by any person in connection with the provision of an English local authority social service; or
 - (b) which the CSCI reasonably believes to be so used, or proposed to be so used. 20
- (3) A person who proposes to exercise any power of entry or inspection conferred by this section must if so required produce some duly authenticated document showing his authority to exercise the power.

86 Right of entry: supplementary

- (1) A person authorised by virtue of section 85 to enter and inspect premises may, if he considers it necessary or expedient for the purposes of this Chapter –
 - (a) inspect and take copies of any documents or records (including personal records) relating to the discharge by the local authority of its social services functions; 25
 - (b) inspect any other item and remove it from the premises; 30
 - (c) interview in private –
 - (i) any person working at the premises; or
 - (ii) any person accommodated or cared for there who consents to be interviewed; and
 - (d) make any other examination into the state and management of the premises and treatment of persons accommodated or cared for there. 35
- (2) The power in subsection (1)(a) includes –
 - (a) power to require any person holding or accountable for documents or records kept on the premises to produce them; and
 - (b) in relation to records which are kept by means of a computer, power to require the records to be produced in a form in which they are legible and can be taken away. 40
- (3) A person authorised by virtue of subsection (1)(a) to inspect any records is entitled to have access to, and to check the operation of, any computer and any

associated apparatus or material which is or has been in use in connection with the records in question.

- (4) A person authorised by virtue of section 85 to enter and inspect premises may –
- (a) require any person to afford him such facilities and assistance with respect to matters within the person’s control as are necessary to enable him to exercise his powers under section 85 or this section; and
 - (b) take such measurements and photographs and make such recordings as he considers necessary to enable him to exercise those powers.
- (5) Any person who without reasonable excuse –
- (a) obstructs the exercise of any power conferred by section 85 or this section, or
 - (b) fails to comply with any requirement of section 85 or this section,
- is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

87 Power to require information etc

- (1) The CSCI may at any time require any person specified in subsection (2) to provide it with any information, documents, records (including personal records) or other items –
- (a) which relates or relate to the discharge by a local authority in England of its social services functions; and
 - (b) which the CSCI considers it necessary or expedient to have for the purposes of this Chapter.
- (2) The persons referred to in subsection (1) are –
- (a) the local authority;
 - (b) a person providing an English local authority social service for the authority; or
 - (c) any NHS body.
- (3) The power in subsection (1) to require the provision of information includes, in relation to records kept by means of a computer, power to require the provision of the records in legible form.
- (4) Any person who without reasonable excuse fails to comply with any requirement imposed by virtue of this section is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

88 Power to require explanation

- (1) The Secretary of State may by regulations make provision requiring prescribed persons to provide to the CSCI, or to persons authorised by it, an explanation of –
- (a) any documents, records or items inspected, copied or provided under sections 85 to 87,
 - (b) any information provided under those sections, or
 - (c) any matters which are the subject of the exercise of any functions of the CSCI under this Chapter,
- in cases where the CSCI considers the explanation necessary or expedient for the purposes of this Chapter.

- (2) Regulations under subsection (1) may require explanations to be provided at such times and places as may be prescribed.
- (3) Any person who without reasonable excuse fails to comply with any requirement imposed by virtue of this section is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

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CHAPTER 6

SOCIAL SERVICES: FUNCTIONS OF NATIONAL ASSEMBLY FOR WALES

Provision of social services

89 General function

The Assembly has the general function of encouraging improvement in the provision of Welsh local authority social services.

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90 Reviews of studies and research

- (1) The Assembly may review –
 - (a) studies and research undertaken by others in relation to the provision of Welsh local authority social services;
 - (b) the methods used in such studies and research; and
 - (c) the validity of conclusions drawn from such studies and research.
- (2) Where the Assembly conducts a review under this section it must publish such report as it considers appropriate.

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91 Reviews and investigations

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- (1) The Assembly has the function of conducting reviews of, and investigations into, the way in which local authorities in Wales discharge their social services functions.
- (2) The Assembly may in particular under this section conduct –
 - (a) a review of the overall provision of Welsh local authority social services;
 - (b) a review of the provision of any Welsh local authority social service of a particular description; or
 - (c) a review of, or investigation into, the provision of any Welsh local authority social service by a particular person or persons.
- (3) The Assembly may in a review under subsection (2) –
 - (a) assess performance against criteria;
 - (b) award performance ratings.
- (4) For the purposes of this section the Assembly may carry out an inspection of –
 - (a) any local authority in Wales;
 - (b) any other person providing a Welsh local authority social service.
- (5) Where the Assembly conducts a review or investigation under this section, it must publish such report as it considers appropriate.

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92 Studies as to economy, efficiency etc

- (1) The Assembly may promote or undertake comparative or other studies designed to enable it to make recommendations –
- (a) for improving economy, efficiency and effectiveness in the discharge by local authorities in Wales of their social services functions; 5
 - (b) for improving the management of such local authorities in the discharge of those functions.
- (2) The Assembly may also promote or undertake studies designed to enable it to prepare reports as to the impact of the operation of any particular statutory provisions on economy, efficiency and effectiveness in the discharge by local authorities in Wales of their social services functions. 10
- (3) The Assembly must publish or otherwise make available –
- (a) any recommendations made by it under subsection (1); and
 - (b) a report on the result of any studies under this section.
- (4) The Assembly and the Audit Commission must co-operate with each other with respect to the exercise of their respective functions under this section and sections 33 and 34 of the Audit Commission Act 1998 (c. 18). 15

93 Additional functions

- The Assembly shall have such additional functions in relation to the provision of Welsh local authority social services as – 20
- (a) correspond to functions conferred on the CSCI by or under this Act; and
 - (b) are specified by the Assembly in regulations.

94 General considerations

- (1) This section applies for the purpose of the exercise by the Assembly of its functions – 25
- (a) under sections 89 to 92; and
 - (b) under regulations under section 93.
- (2) The Assembly shall be concerned in particular with –
- (a) the availability of, and access to the services; 30
 - (b) the quality and effectiveness of the services;
 - (c) the management of the services; and
 - (d) the economy and efficiency of their provision and their value for money;
 - (e) the need to safeguard and promote the rights and welfare of children; 35
 - and
 - (f) the effectiveness of measures taken by local authorities for the purpose specified in paragraph (e).

Ancillary powers

95 Right of entry

- (1) A person authorised to do so by the Assembly may, if the Assembly considers it necessary or expedient for the purposes of this Chapter, at any reasonable time enter and inspect any relevant premises. 5
- (2) In subsection (1) “relevant premises” means premises –
 - (a) which are used, or proposed to be used, by any person for any purpose in connection with the provision of a Welsh local authority social service, or
 - (b) which the Assembly reasonably believes to be so used, or proposed to be so used, 10but does not include premises used wholly or mainly as a private dwelling.
- (3) A person who proposes to exercise any power of entry or inspection conferred by this section must if so required produce some duly authenticated document showing his authority to exercise the power. 15

96 Right of entry: supplementary

- (1) A person authorised by virtue of section 95 to enter and inspect premises may, if he considers it necessary or expedient for the purposes of this Chapter –
 - (a) inspect and take copies of any documents or records (including personal records) relating to the discharge by the local authority of its social services functions; 20
 - (b) inspect any other item and remove it from the premises;
 - (c) interview in private –
 - (i) any person working at the premises; or
 - (ii) any person accommodated or cared for there who consents to be interviewed; and 25
 - (d) make any other examination into the state and management of the premises and treatment of persons accommodated or cared for there.
- (2) The power in subsection (1)(a) includes –
 - (a) power to require any person holding or accountable for documents or records kept on the premises to produce them; and 30
 - (b) in relation to records which are kept by means of a computer, power to require the records to be produced in a form in which they are legible and can be taken away.
- (3) A person authorised by virtue of subsection (1)(a) to inspect any records is entitled to have access to, and to check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the records in question. 35
- (4) A person authorised by virtue of section 95 to enter and inspect premises may –
 - (a) require any person to afford him such facilities and assistance with respect to matters within the person’s control as are necessary to enable him to exercise his powers under section 95 or this section; 40
 - (b) take such measurements and photographs and make such recordings as he considers necessary to enable him to exercise those powers. 45

- (5) Any person who without reasonable excuse –
- (a) obstructs the exercise of any power conferred by section 95 or this section, or
 - (b) fails to comply with any requirement of section 95 or this section,
- is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale. 5

97 Power to require information

- (1) The Assembly may at any time require any person specified in subsection (2) to provide it with any information, documents, records (including personal records) or other items – 10
- (a) which relates or relate to the discharge by a local authority in Wales of its social services functions; and
 - (b) which the Assembly considers it necessary or expedient to have for the purpose of any of its functions under this Chapter.
- (2) The persons referred to in subsection (1) are – 15
- (a) the local authority;
 - (b) a person providing a Welsh local authority social service for the authority; or
 - (c) any NHS body.
- (3) The power in subsection (1) to require the provision of information includes, in relation to records kept by means of a computer, power to require the provision of the records in legible form. 20
- (4) Any person who without reasonable excuse fails to comply with any requirement imposed by virtue of this section is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale. 25

98 Power to require explanation

- (1) The Assembly may by regulations make provision requiring prescribed persons to provide to the Assembly, or to persons authorised by it, an explanation of – 30
- (a) any documents, records or items inspected, copied or produced under sections 95 to 97,
 - (b) any information provided under those sections, or
 - (c) any matters which are the subject of the exercise of any functions of the Assembly under this Chapter,
- in cases where the Assembly considers the explanation necessary or expedient for the purposes of this Chapter. 35
- (2) Regulations under subsection (1) may require explanations to be provided at such times and places as may be prescribed.
- (3) Any person who without reasonable excuse fails to comply with any requirement imposed by virtue of this section is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale. 40

CHAPTER 7

FUNCTIONS UNDER THE CARE STANDARDS ACT 2000

Functions of CHAI and CSCI

99 Transfer of functions to CHAI and CSCI

- (1) The functions of the National Care Standards Commission under Part 2 of the Care Standards Act 2000 (c. 14) (registration and standards) are transferred in accordance with this section. 5
- (2) Its functions under that Part are transferred to the CHAI insofar as they relate to—
 - (a) independent hospitals; 10
 - (b) independent clinics; and
 - (c) independent medical agencies.
- (3) Its functions under that Part are transferred to the CSCI insofar as they relate to—
 - (a) children’s homes; 15
 - (b) care homes;
 - (c) residential family centres;
 - (d) domiciliary care agencies;
 - (e) nurses agencies;
 - (f) fostering agencies; 20
 - (g) voluntary adoption agencies; and
 - (h) adoption support agencies.

100 General functions of CHAI

In the Care Standards Act 2000, after section 5 insert—

“5A General duties of Commission for Healthcare Audit and Inspection 25

- (1) The Commission for Healthcare Audit and Inspection (referred to in this Act as “the CHAI”) shall have the general duty of keeping the Secretary of State informed about—
 - (a) the provision in England of independent health services; and
 - (b) in particular, the availability and quality of the services. 30
- (2) The CHAI shall have the general duty of encouraging improvement in the quality of independent health services provided in England.
- (3) The CHAI shall make information about independent health services provided in England available to the public.
- (4) When asked to do so by the Secretary of State, the CHAI shall give him advice or information on such matters relating to the provision in England of independent health services as may be specified in his request. 35
- (5) The CHAI may at any time give advice to the Secretary of State on—

<ul style="list-style-type: none"> (a) any changes which the CHAI thinks should be made, for the purpose of securing improvement in the quality of independent health services provided in England, in the standards set out in statements under section 23; (b) any other matter connected with the provision in England of such services. 	5
(6) In the exercise of its functions under this Act the CHAI must have particular regard to the need to safeguard and promote the rights and welfare of children.	
(7) The Secretary of State may by regulations confer additional functions on the CHAI in relation to the provision in England of independent health services.	10
(8) In this section “independent health services” means services of the kind provided by persons for whom the CHAI is the registration authority.”	
101 General functions of CSCI	15
In the Care Standards Act 2000 (c. 14), after section 5A (inserted by section 100 above) insert—	
“5B General duties of Commission for Social Care Inspection	
(1) The Commission for Social Care Inspection (referred to in this Act as “the CSCI”) shall have the general duty of keeping the Secretary of State informed about—	20
<ul style="list-style-type: none"> (a) the provision in England of registered social care services; and (b) in particular, the availability and quality of the services. 	
(2) The CSCI shall have the general duty of encouraging improvement in the quality of registered social care services provided in England.	25
(3) The CSCI shall make information about registered social care services provided in England available to the public.	
(4) When asked to do so by the Secretary of State, the CSCI shall give him advice or information on such matters relating to the provision in England of registered social care services as may be specified in his request.	30
(5) The CSCI may at any time give advice to the Secretary of State on—	
<ul style="list-style-type: none"> (a) any changes which the CSCI thinks should be made, for the purpose of securing improvement in the quality of registered social care services provided in England, in the standards set out in statements under section 23; (b) any other matter connected with the provision in England of registered social care services. 	35
(6) In the exercise of its functions under this Act the CSCI must have particular regard to the need to safeguard and promote the rights and welfare of children.	40
(7) The Secretary of State may by regulations confer additional functions on the CSCI in relation to the provision in England of registered social care services.	

- (8) In this section, “registered social care services” means services of the kind provided by persons for whom the CSCI is the registration authority.”

102 Fees

- (1) The Care Standards Act 2000 (c. 14) is amended as follows. 5
(2) After section 113 insert –

“113A Fees payable under Part 2

- (1) The CHAI and the CSCI may each from time to time make and publish provision determining the amount of any fee payable to it under Part 2.
- (2) Provision under subsection (1) may include provision – 10
(a) for different amounts to be payable in different cases, or classes of case;
(b) for different amounts to be payable by persons of different descriptions.
- (3) Before the CHAI or the CSCI makes any provision under subsection (1) it must consult such bodies as appear to it to be representative of the persons liable to pay the fee. 15
- (4) No provision may be made under subsection (1) without the consent of the Secretary of State.
- (5) If the Secretary of State considers it necessary or desirable to do so, he may by regulations make provision determining the amount of a fee payable to the CHAI or the CSCI under Part 2 instead of the amount for which provision is made under subsection (1). 20
- (6) Before making any regulations under subsection (5) in respect of fees payable to the CHAI or the CSCI, the Secretary of State shall consult that body and such other persons as appear to him to be appropriate.” 25
- (3) In section 12 (applications for registration), in subsection (2), for “a fee of the prescribed amount” substitute “a fee of the amount determined under section 113A, where the registration authority is the CHAI or the CSCI, or of the prescribed amount, where the registration authority is the Assembly.” 30
- (4) In section 15 (other applications), in subsection (3) for “a fee of such amount as may be prescribed” substitute “a fee of – 35
(a) the amount determined under section 113A, where the registration authority is the CHAI or the CSCI; or
(b) the prescribed amount, where the registration authority is the Assembly.”
- (5) In that section, in subsection (5) –
(a) for “subsection (3)” substitute “subsection (3)(b)”; and
(b) for “the registration authority” substitute “the Assembly”.
- (6) In section 16 (regulations about registration), for subsection (3) substitute – 40
“(3) Persons registered under this Part must also pay to the registration authority, at such time as may be prescribed, an annual fee –

- (a) of such amount as may be determined under section 113A, where the registration authority is the CHAI or the CSCI; and
 - (b) of such amount as may be prescribed, where the registration authority is the Assembly.”
- (7) In section 22(7)(i) (fees in respect of notification of variation of corporate ownership etc), for the words from “of a fee” to the end substitute “, in respect of any notification required to be made by virtue of paragraph (h), of a fee of –
- (i) such amount as may be determined under section 113A, where notification is made to the CHAI or the CSCI; or
 - (ii) the prescribed amount, where notification is made to the Assembly”.

Miscellaneous

103 Meaning of “independent medical agency”

In section 2(4) of the Care Standards Act 2000 (c. 14) (an “independent medical agency” does not include an independent clinic), after “clinic” insert “or an independent hospital”.

104 Children’s homes providing secure accommodation

- (1) In section 4 of the Care Standards Act 2000 (basic definitions), in subsection (8)(a) (references to a description of establishment), after “children’s home” insert “, a children’s home providing accommodation for the purpose of restricting liberty,”.
- (2) In section 22 of that Act (regulations), in subsection (8) (regulations relating to children’s homes) –
- (a) omit paragraph (a), and
 - (b) in paragraph (b), for “mentioned in paragraph (a)” substitute “of restricting liberty”.

105 Information and inspection

- (1) Section 31 of the Care Standards Act 2000 (inspections by persons authorised by registration authority) is amended as follows.
- (2) After subsection (1), insert –
- “(1A) The power under subsection (1) to require the provision of information includes –
- (a) power to require the provision of copies of any documents or records (including personal records); and
 - (b) in relation to records kept by means of a computer, power to require the provision of the records in legible form.”
- (3) In subsection (3) –
- (a) in paragraph (b), for “(other than medical records)” substitute “(including personal records)”; and
 - (b) in paragraph (d), for “employed” substitute “working”.
- (4) In subsection (6), omit “and inspect any medical records relating to his treatment in the establishment”.

106 Assembly: duties relating to children

In section 8 of the Care Standards Act 2000 (c. 14) (general functions of the Assembly), at the end insert—

- “(6) The Assembly must have particular regard to the need to safeguard and promote the rights and welfare of children in the exercise of— 5
- (a) its functions exercisable by virtue of section 5(b) and subsections (1) to (3) of this section; and
 - (b) any other functions exercisable by the Assembly corresponding to functions exercisable by the CSCI in relation to England.”

CHAPTER 8 10

OTHER FUNCTIONS OF CSCI

107 Boarding schools and colleges

The functions of the National Care Standards Commission under section 87 of the Children Act 1989 (c. 41) (welfare of children accommodated in boarding schools and colleges) are transferred to the CSCI. 15

108 Secure training centres

- (1) The CSCI and the Secretary of State may make arrangements for the CSCI to conduct inspections of secure training centres in England.
- (2) Inspections under this section shall be on such terms, including terms as to payment of the CSCI, as the CSCI and Secretary of State may agree in the arrangements. 20
- (3) In this section, “secure training centre” has the same meaning as in section 43(1)(d) of the Prison Act 1952 (c. 52).

CHAPTER 9

COMPLAINTS 25

Health care complaints

109 Complaints about health care: English and cross-border bodies

- (1) The Secretary of State may by regulations make provision about the procedure to be followed where a complaint is made to an English NHS body, or cross-border SHA, about— 30
 - (a) the exercise by the body of any of its functions;
 - (b) the provision by any person of health care for which the body is responsible;
 - (c) the provision of services by the body or any other person in pursuance of arrangements made by the body under section 31 of the Health Act 1999 (c. 8) in relation to the exercise of the health-related functions of a local authority. 35
- (2) Regulations under this section may in particular make provision—

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| <ul style="list-style-type: none"> (a) for circumstances in which a complaint need not be considered; (b) about the procedure to be followed on the making of a complaint and how it is to be considered; (c) for the person or body by whom a complaint is to be considered; (d) requiring the production of information or documents to enable a complaint to be considered; (e) about the action to be taken as the result of a complaint; (f) about the making of a report about a complaint; (g) for a complaint to be referred to another person or body. | 5 |
| <p>(3) The provision that may be made under subsection (2)(a) includes in particular provision for a complaint only to be considered if –</p> <ul style="list-style-type: none"> (a) it is made in the prescribed manner and within the prescribed period; (b) it is made by a person of a prescribed description; (c) it is a complaint of a prescribed description. | 10 |
| <p>(4) The provision that may be made under subsection (2)(c) includes in particular provision for a complaint to be considered by –</p> <ul style="list-style-type: none"> (a) the NHS body to whom the complaint is made; (b) any other NHS body; (c) the CHAI; (d) an independent panel established in the prescribed manner. | 15 |
| <p>(5) The provision that may be made under subsection (2)(g) includes in particular provision for a complaint to be referred to –</p> <ul style="list-style-type: none"> (a) a Health Service Commissioner; (b) a professional regulatory body; (c) the police; (d) any person who may consider – <ul style="list-style-type: none"> (i) a complaint made under section 110, 111 or 112; or (ii) a representation made under section 24D or 26 of the Children Act 1989 (c. 41). | 25 |
| <p>(6) Provision under subsection (2)(g) may include provision enabling a complaint referred to a Health Service Commissioner to be considered under the Health Service Commissioners Act 1993 (c. 46).</p> | 30 |
| <p>(7) Regulations under this section may provide for different parts or aspects of a complaint to be treated differently.</p> | |
| <p>(8) Regulations under this section may also make provision –</p> <ul style="list-style-type: none"> (a) for any person or body in respect of whom a complaint is made to pay to any person or body who considers the complaint under this section a fee of such amount as may be specified in, or calculated or determined under, the regulations; and (b) for an independent panel to review the amount chargeable under paragraph (a) in any particular case and, if the panel thinks fit, to substitute a lesser amount for that amount. | 35 |
| <p>(9) Where regulations under this section make provision under subsection (2)(c) or (g) they may also permit the disclosure of information relevant to a complaint notwithstanding any obligation of confidence owed in respect of it.</p> | 45 |

110 Complaints about health care: Welsh bodies

- (1) The Assembly shall by regulations make provision about the procedure to be followed where a complaint is made to a Welsh NHS body about—
 - (a) the exercise by the body of any of its functions;
 - (b) the provision by any person of health care for which the body is responsible; 5
 - (c) the provision of services by the body or any other person in pursuance of arrangements made by the body under section 31 of the Health Act 1999 (c. 8) in relation to the exercise of the health-related functions of a local authority. 10
- (2) Regulations under this section may in particular make provision—
 - (a) for circumstances in which a complaint need not be considered;
 - (b) about the procedure to be followed on the making of a complaint and how it is to be considered;
 - (c) for the person or body by whom a complaint is to be considered; 15
 - (d) requiring the production of information or documents to enable a complaint to be considered;
 - (e) about the action to be taken as the result of a complaint;
 - (f) about the making of a report about a complaint;
 - (g) for a complaint to be referred to another person or body. 20
- (3) The provision that may be made under subsection (2)(a) includes in particular provision for a complaint only to be considered if—
 - (a) it is made in the prescribed manner and within the prescribed period;
 - (b) it is made by a person of a prescribed description;
 - (c) it is a complaint of a prescribed description. 25
- (4) The provision that may be made under subsection (2)(c) includes in particular provision for a complaint to be considered by—
 - (a) the NHS body to whom the complaint is made;
 - (b) any other NHS body;
 - (c) the CHAI; 30
 - (d) an independent lay person;
 - (e) an independent panel established in the prescribed manner.
- (5) The provision that may be made under subsection (2)(g) includes in particular provision for a complaint to be referred to—
 - (a) a Health Service Commissioner; 35
 - (b) a professional regulatory body;
 - (c) the police;
 - (d) any person who may consider—
 - (i) a complaint made under section 109, 111 or 112;
 - (ii) a representation made under section 24D or 26 of the Children Act 1989 (c. 41). 40
- (6) Provision under subsection (2)(g) may include provision enabling a complaint referred to a Health Service Commissioner to be considered under the Health Service Commissioners Act 1993 (c. 46).
- (7) Regulations under this section may provide for different parts or aspects of a complaint to be treated differently. 45

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- (8) Regulations under this section may also make provision –
- (a) for any person or body in respect of whom a complaint is made to pay to any person or body who considers the complaint under this section a fee of such amount as may be specified in or determined under the regulations; 5
 - (b) for an independent panel to review the amount chargeable under paragraph (a) in any particular case and, if the panel thinks fit, to substitute a lesser amount for that amount.
- (9) Where regulations under this section make provision under subsection (2)(c) or (g), they may also permit the disclosure of information relevant to a complaint notwithstanding any obligation of confidence owed in respect of it. 10

Social care complaints

111 Complaints about social services: England

- (1) The Secretary of State may by regulations make provision about the procedure to be followed where a complaint is made to a local authority in England in relation to – 15
- (a) the discharge by the authority of any of its social services functions;
 - (b) the provision of services by another person pursuant to arrangements made by the authority in the discharge of those functions;
 - (c) the provision of services by the authority or any other person in pursuance of arrangements made by the authority under section 31 of the Health Act 1999 (c. 8) in relation to the functions of an NHS body (within the meaning of that section). 20
- (2) Regulations under this section may in particular make provision –
- (a) for circumstances in which a complaint need not be considered; 25
 - (b) about the procedure to be followed on the making of a complaint and how it is to be considered;
 - (c) for the person or body by whom a complaint is to be considered;
 - (d) requiring the production of information or documents to enable a complaint to be considered; 30
 - (e) about the action to be taken as the result of a complaint;
 - (f) about the making of a report about a complaint;
 - (g) for a complaint to be referred to another person or body.
- (3) The provision that may be made under subsection (2)(a) includes in particular provision for a complaint only to be considered if – 35
- (a) it is made in the prescribed manner and within the prescribed period;
 - (b) it is made by a person of a prescribed description;
 - (c) it is a complaint of a prescribed description.
- (4) The provision that may be made under subsection (2)(c) includes in particular provision for a complaint to be considered by – 40
- (a) the local authority to whom the complaint is made;
 - (b) the CSCI;
 - (c) a review panel established in the prescribed manner.
- (5) The provision that may be made under subsection (2)(g) includes in particular provision for a complaint to be referred to the Commission for Local 45

Government Administration in England, for investigation under Part 3 of the Local Government Act 1974 (c. 7).

- (6) Regulations under this section may also make provision –
- (a) for any person in respect of whom a complaint is made to pay to any person or body considering the complaint under this section a fee of such amount as may be specified in, or calculated or determined under, the regulations; 5
 - (b) for an independent panel to review the amount chargeable under paragraph (a) in any particular case and, if the panel thinks fit, to substitute a lesser amount for that amount. 10
- (7) Regulations under this section may –
- (a) provide for different parts or aspects of a complaint to be treated differently;
 - (b) contain such incidental and supplemental provision as the Secretary of State thinks fit. 15
- (8) Regulations under this section may not make provision about representations capable of being considered under section 24D or section 26 of the Children Act 1989 (c. 41).
- (9) Where regulations under this section make provision under subsection (2)(c) or (g) they may also permit the disclosure of information relevant to a complaint notwithstanding any obligation of confidence owed in respect of it. 20

112 Complaints about social services: Wales

- (1) The Assembly may by regulations make provision about the procedure to be followed where a complaint is made to local authority in Wales about –
- (a) the discharge by the authority of any of its social services functions; 25
 - (b) the provision of services by any other person pursuant to arrangements made by the authority in the discharge of those functions;
 - (c) the provision of services by the authority or any other person in pursuance of arrangements made by the authority under section 31 of the Health Act 1999 (c. 8) in relation to the functions of an NHS body (within the meaning of that section). 30
- (2) Regulations under this section may in particular make provision –
- (a) for circumstances in which a complaint need not be considered;
 - (b) about the procedure to be followed on the making of a complaint and how it is to be considered; 35
 - (c) for the person or body by whom a complaint is to be considered;
 - (d) requiring the production of information or documents to enable a complaint to be considered;
 - (e) about the action to be taken as the result of a complaint;
 - (f) about the making of a report about a complaint; 40
 - (g) for a complaint to be referred to another person or body.
- (3) The provision that may be made under subsection (2)(a) includes in particular provision for a complaint only to be considered if –
- (a) it is made in the prescribed manner and within the prescribed period;
 - (b) it is made by a person of a prescribed description; 45
 - (c) it is a complaint of a prescribed description.

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- (4) The provision that may be made under subsection (2)(c) includes in particular provision for a complaint to be considered by –
- (a) the local authority to whom the complaint is made;
 - (b) a review panel established in the prescribed manner.
- (5) The provision that may be made under subsection (2)(g) includes in particular provision for a complaint to be referred to the Commission for Local Government Administration in Wales, for investigation under that of that Act. 5
- (6) Regulations under this section may also make provision –
- (a) for any person in respect of whom a complaint is made to pay to any person or body considering the complaint under this section a fee of such amount as may be specified in, or calculated or determined under, the regulations; 10
 - (b) for an independent panel to review the amount chargeable under paragraph (a) in any particular case and, if the panel thinks fit, to substitute a lesser amount for that amount. 15
- (7) Regulations under this section may make provision requiring local authorities to –
- (a) monitor arrangements made by them for the purpose of ensuring compliance with the regulations;
 - (b) publicise the procedures established by them under the regulations. 20
- (8) Regulations under this section may –
- (a) provide for different parts or aspects of a complaint to be treated differently;
 - (b) contain such incidental and supplemental provision as the Assembly thinks fit. 25
- (9) Regulations under this section may not make provision about representations capable of being considered under section 24D or section 26 of the Children Act 1989 (c. 41).
- (10) Where regulations under this section make provision under subsection (2)(c) or (g) they may also permit the disclosure of information relevant to a complaint notwithstanding any obligation of confidence owed in respect of it. 30

113 Complaints under the Children Act 1989

- (1) In the Children Act 1989, after section 26 (representations) insert –

“26ZA Representations: further consideration

- (1) The Secretary of State may by regulations make provision for the further consideration of representations which have been considered by a local authority in England under section 24D or section 26. 35
- (2) Regulations under this section may in particular make provision –
- (a) for further consideration of the representation by the Commission for Social Care Inspection (“the CSCI”); 40
 - (b) about the procedure to be followed on the consideration of a representation under this section;
 - (c) for the CSCI to make recommendations about the action to be taken as the result of a representation;

- (d) about the making of reports by the CSCI about a representation;
 - (e) for a representation to be referred by the CSCI back to the local authority concerned for further consideration by the authority;
 - (f) for a representation to be referred by the CSCI to the Commission for Local Government Administration in England for investigation under Part 3 of the Local Government Act 1974 (c. 7);
 - (g) for a representation to be referred by the CSCI to an independent panel established under the regulations. 5
- (3) For the purposes of the consideration or referral of a representation under this section, regulations under this section may – 10
- (a) require the production of information or documents by any person of a prescribed description;
 - (b) permit the disclosure of information relevant to a complaint notwithstanding any obligation of confidence owed in respect of it. 15
- (4) Regulations under this section may also make provision for –
- (a) any person or body in respect of whom a representation is made to pay to any person or body who considers it under this section a fee of such amount as may be specified in, or calculated or determined under, the regulations; and 20
 - (b) for an independent panel to review the amount chargeable under paragraph (a) in any particular case and, if the panel thinks fit, to substitute a lesser amount for that amount.
- (5) Regulations under this section may provide for different parts or aspects of a representation to be treated differently.” 25
- (2) In section 26A of that Act (requirement on local authorities to provide assistance for persons making representations under sections 24D and section 26), after subsection (2) insert –
- “(2A) The duty under subsection (1) includes a duty to make arrangements for the provision of assistance where representations under section 24D or 26 are further considered under section 26ZA”. 30

Complaints: supplementary

114 Complaints about handling of complaints

- In section 3 of the Health Service Commissioners Act 1993 (c. 46) (remit of Commissioners), after subsection (1D) insert – 35
- “(1E) Where a complaint is duly made to a Commissioner by or on behalf of a person that the person has sustained injustice or hardship in consequence of maladministration by –
- (a) the Commission for Healthcare Audit and Inspection, or an independent panel, in the exercise of any function conferred on it under section 109 of the Health and Social Care (Community Health and Standards) Act 2003, or 40
 - (b) an independent lay person or panel in the exercise of any function conferred on him or it under section 110 of that Act, 45

the Commissioner may, subject to the provisions of this Act, investigate the alleged maladministration.”

115 Complaints: data protection

In section 31 of the Data Protection Act 1998 (c. 29) (regulatory activity) at the end there is inserted –

- “(6) Personal data processed for the purpose of the function of considering a complaint under section 109, 110, 111 or 112 of the Health and Social Care (Community Health and Standards) Act 2003, or sections 24D, 26 or 26ZA of the Children Act 1989, are exempt from the subject information provisions in any case to the extent to which the application of those provisions to the data would be likely to prejudice the proper discharge of that function.”

CHAPTER 10

SUPPLEMENTARY AND GENERAL

Joint working 15

116 Co-operation etc between CHAI and CSCI

- (1) The CHAI and the CSCI must co-operate with each other where it seems to them appropriate to do so for the efficient and effective discharge of their respective functions.
- (2) The CHAI and the CSCI must, in prescribed circumstances, consult each other in relation to the proposed exercise of their functions. 20
- (3) Each of CHAI and the CSCI may each delegate to the other any of its functions to be exercised by the other on its behalf.
- (4) The CHAI and the CSCI may, subject to such conditions as may be prescribed, enter into arrangements for the pooling of financial resources whenever they consider it appropriate to do so. 25

117 Joint reviews and investigations: CHAI and CSCI

- (1) The CHAI and the CSCI may exercise any of their powers to conduct reviews and investigations under this Part in conjunction with each other.
- (2) The CHAI may conduct a review or investigation under this Part, or undertake a study under section 56, in conjunction with a review, investigation or study relating to any functions of an NHS body which is being conducted by any other public authority. 30
- (3) The CSCI may conduct a review or investigation under this Part, or a study under section 78 in conjunction with a review, investigation or study relating to any other functions of a local authority which is being conducted by any other public authority. 35
- (4) Where a review, investigation or study is being conducted by the CHAI in conjunction with any other authority pursuant to this section, any report which under this Part the CHAI is required to publish in relation to the review, 40

investigation or study may consist of a joint report by the CHAI and the other authority as to all the matters being investigated by both of them.

- (5) Where a review, investigation or study is being conducted by the CSCI in conjunction with any other authority pursuant to this section, any report which under this Part the CSCI is required to publish in relation to the review, investigation or study may consist of a joint report by the CSCI and the other authority as to all the matters being investigated by both of them. 5
- (6) This section is without prejudice to any other powers of the CHAI or the CSCI.

118 Power to assist

- (1) The CHAI or the CSCI may if it thinks appropriate to do so provide assistance to any other public body in the United Kingdom for the purpose of the exercise by that body of its functions. 10
- (2) The CHAI may if it thinks appropriate to do so provide assistance to the regulator for the purpose of the exercise of the regulator’s functions.
- (3) Assistance provided by the CHAI or the CSCI under this section may be provided on such terms, including terms as to payment, as it thinks fit. 15

119 Arrangements with Ministers etc: CHAI

- (1) Arrangements may be made between the CHAI and a Minister of the Crown –
(a) for the CHAI to perform any of its functions in relation to any prescribed health scheme for which the Minister has responsibility; or 20
(b) for the CHAI to provide services or facilities in so far as they are required by the Minister in connection with any such health scheme.
- (2) Arrangements may be made between the CHAI and a Northern Ireland Minister –
(a) for the CHAI to perform on behalf of the Minister any functions of the Minister which – 25
(i) correspond to any functions of the CHAI; and
(ii) relate to the Northern Irish health service;
(b) for the CHAI to provide services or facilities in so far as they are required by the Minister in connection with the exercise by him of any such functions. 30
- (3) Arrangements under this section may be made on such terms and conditions as may be agreed between the parties to the arrangements.
- (4) Those terms and conditions may include provision with respect to the making of payments to the CHAI in respect of the cost to it of performing or providing any functions, services or facilities under the arrangements. 35
- (5) Any arrangements under subsection (2)(a) are not to affect the responsibility of the Northern Ireland Minister on whose behalf any functions are exercised.
- (6) In this section –
“health scheme” means any scheme which appears to the Secretary of State to be a health or medical scheme paid for out of public funds; 40
“Northern Ireland Minister” includes the First Minister, the deputy First Minister and a Northern Ireland department;

“Northern Irish health service” means any of the health services under any enactment which extends to Northern Ireland and which corresponds to section 1(1) of the 1977 Act.

120 Arrangements with Ministers etc: CSCI

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| (1) Arrangements may be made between the CSCI and a Minister of the Crown— | 5 |
| (a) for the CSCI to advise the Minister with respect to the provision of any services for which the Minister has responsibility which are similar to English local authority social services; or | |
| (b) for the CSCI to review, and conduct inspections in relation to, the provision of any such services. | 10 |
| (2) Arrangements may be made between the CSCI and a Northern Ireland Minister for the CSCI to advise and assist the Northern Ireland Minister with respect to the provision of any services for which the Minister has responsibility which are similar to English local authority social services. | |
| (3) Arrangements under this section may be made on such terms and conditions as may be agreed between the parties to the arrangements. | 15 |
| (4) Those terms and conditions may include provision with respect to the making of payments to the CSCI in respect of the cost to it of performing or providing any functions, services or facilities under the arrangements. | |
| (5) In this section “Northern Ireland Minister” has the same meaning as in section 119. | 20 |

Annual reports

121 Annual reports: CHAI

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| (1) As soon as possible after the end of each financial year the CHAI must make a report on each of the following— | 25 |
| (a) the way in which it has exercised its functions during the year; | |
| (b) the provision of health care by or for NHS bodies. | |
| (2) A report under subsection (1)(b) may include information provided to the CHAI by the Assembly. | 30 |
| (3) The CHAI must lay before Parliament a copy of each report made under this section. | |
| (4) The CHAI must send a copy of each report made under this section to the Secretary of State and the Assembly. | |

122 Annual reports: CSCI

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| (1) As soon as possible after the end of each financial year the CSCI must make a report on each of the following— | 35 |
| (a) the way in which it has exercised its functions during the year; | |
| (b) what it has found in the course of exercising its functions during the year. | 40 |

- (2) The CSCI must lay before Parliament a copy of each report made under this section.
- (3) The CSCI must send a copy of each such report to the Secretary of State.
- (4) The CSCI must also provide the Secretary of State with such reports and information relating to the exercise of its functions as he may from time to time require

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Inquiries

123 Inquiries: CHAI

- (1) The appropriate authority may cause an inquiry to be held into any matter connected with the exercise by the CHAI of any of its functions (under any enactment).
- (2) Before an inquiry is begun, the authority may give a direction that it be held in private.
- (3) Where no such direction has been given, the person holding the inquiry may if he thinks fit hold it, or any part of it, in private.
- (4) Subsections (2) to (5) of section 250 of the Local Government Act 1972 (c. 70) (powers in relation to local inquiries) apply in relation to an inquiry under this section as they apply in relation to a local inquiry under that section
- (5) The report of the person holding the inquiry is to be published, unless the authority considers that there are exceptional circumstances which make publication inappropriate.
- (6) Publication under subsection (5) is to be in such manner as the appropriate authority considers appropriate.
- (7) In this section, the “appropriate authority” means
 - (a) the Secretary of State, in respect of the exercise of functions relating to the provision of health care by or for an English NHS body or cross-border SHA; and
 - (b) the Assembly, in respect of the exercise of functions relating to the provision of health care by or for a Welsh NHS body (and not falling within paragraph (a)).

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124 Inquiries: CSCI

- (1) The Secretary of State may cause an inquiry to be held into any matter connected with the exercise by the CSCI of any of its functions (under any enactment).
- (2) Before an inquiry is begun, the Secretary of State may give a direction that it be held in private.
- (3) Where no such direction has been given, the person holding the inquiry may if he thinks fit hold it, or any part of it, in private.
- (4) Subsections (2) to (5) of section 250 of the Local Government Act 1972 (powers in relation to local inquiries) apply in relation to an inquiry under this section as they apply in relation to a local inquiry under that section

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- (5) The report of the person holding the inquiry is to be published, unless the Secretary of State considers that there are exceptional circumstances which make publication inappropriate.
- (6) Publication under subsection (5) is to be in such manner as the Secretary of State considers appropriate.

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Information

125 Disclosure of information obtained by CHAI

- (1) This section applies to information which—
- (a) has been obtained by the CHAI on terms or in circumstances requiring it to be held in confidence; and
 - (b) relates to and identifies an individual.
- (2) Subject to section 126, a person is guilty of an offence if he knowingly or recklessly discloses information to which this section applies during the lifetime of the individual to which it relates.
- (3) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum, or to both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.
- (4) For the purposes of subsection (1)(b), information obtained by the CHAI, or any person authorised by it, is to be regarded as identifying an individual if that individual can be identified—
- (a) from that information, or
 - (b) from that information and from other information obtained by the CHAI or any person authorised by it.

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126 Section 125: defence

- (1) It is a defence for a person charged with an offence under section 125 to prove that at the time of the alleged offence—
- (a) any of the circumstances in subsection (2) applied in relation to the disclosure in question; or
 - (b) he reasonably believed that they applied.
- (2) The circumstances referred to in subsection (1) are that—
- (a) the disclosure was made in a form in which the individual to whom it relates is not identified;
 - (b) the disclosure was made with the consent of the individual to whom the information relates;
 - (c) the information disclosed had previously been lawfully disclosed to the public;
 - (d) the disclosure was made under or pursuant to regulations under section 109 (complaints);
 - (e) the disclosure was made in accordance with any enactment or court order;
 - (f) the disclosure was necessary or expedient for the purposes of protecting the welfare of any individual;

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- (g) the disclosure was made to any body or person in circumstances where it was necessary or expedient for the person or body to have the information for the purpose of exercising his or its functions under any enactment.
- (3) It is also a defence for a person charged with an offence under section 125 to prove that the disclosure was made – 5
- (a) for the purposes of facilitating the exercise of any functions of the CHAI (under any enactment);
 - (b) in connection with the investigation of a criminal offence (whether or not in the United Kingdom); 10
 - (c) for the purpose of criminal proceedings (whether or not in the United Kingdom);
- (4) For the purposes of subsection (2)(a), information disclosed by a person is not to be regarded as being in a form in which an individual is not identified if the individual can be identified – 15
- (a) from that information, or
 - (b) from that information and from other information disclosed by the CHAI, by any person authorised by it or by any of its members or employees.
- 127 Information obtained by CHAI: supplementary** 20
- (1) The CHAI may, subject to section 125, use any information it obtains, or documents produced to it, in the course of exercising any of its functions for the purposes of any of its other functions.
 - (2) A person may disclose information to which section 125 applies notwithstanding any obligation of confidence owed in respect of it, if in disclosing the information, he is not guilty of an offence under that section. 25
- 128 Information obtained by CSCI: supplementary**
- The CSCI may use any information it obtains, or documents produced to it, in the course of exercising any of its functions for the purposes of any of its other functions. 30
- Wales: supplementary*
- 129 Annual reports of Assembly**
- As soon as possible after the end of each financial year of the Assembly, the Assembly must make and publish a report or reports on –
- (a) what it has found during the year in the course of exercising – 35
 - (i) its functions under Chapter 4 and 6 of this Part other than any function of making regulations);
 - (ii) its functions exercisable by virtue of section 5(b) and 8(1) to (3) of the Care Standards Act 2000 (c. 14);
 - (b) the way in which the Assembly has during the year exercised those functions. 40

130 Use by Assembly of information

- (1) The Assembly may use any information it obtains, or documents produced to it, in the course of exercising any function of the Assembly referred to in any paragraph of subsection (2) for the purposes of any function of the Assembly referred to in any other paragraph of that subsection. 5
- (2) The functions of the Assembly referred to in subsection (1) are—
- (a) its functions under Chapter 4 of this Part;
 - (b) its functions under Chapter 6 of this Part;
 - (c) its functions exercisable by virtue of section 5(b) or 8(1) to (3) of the Care Standards Act 2000 (c. 14); 10
 - (d) its functions under section 80 of the Children Act 1989 (c. 41).
- (3) References to functions in subsection (2) do not include functions of making regulations.

131 Inquiries: Wales

- (1) This section applies where, under section 35 of the Government of Wales Act 1998 (c. 38), the Assembly causes an inquiry to be held into any matter relevant to the exercise of— 15
- (a) its functions under Chapter 4 or 6 of this Part (other than any function of making regulations);
 - (b) its functions under section 87 of the Children Act 1989. 20
- (2) Before an inquiry is begun, the Assembly may give a direction that it be held in private.
- (3) Where no such direction has been given, the person holding the inquiry may if he thinks fit hold it, or any part of it, in private.
- (4) The report of the person holding the inquiry is to be published, unless the Assembly considers that there are exceptional circumstances which make publication inappropriate. 25
- (5) Publication under subsection (4) is to be in such manner as the Assembly considers appropriate.

132 Co-operation between Assembly and CHAI 30

- (1) The Assembly and the CHAI must co-operate with each other where it seems to them appropriate to do so for the efficient and effective discharge of any relevant function.
- (2) For the purposes of subsection (1), a relevant function is— 35
- (a) any function of the CHAI under Chapter 3 of this Part;
 - (b) any function of the Assembly under Chapter 4 or 6 of this Part (other than any function of making regulations);
 - (c) any function of the CHAI under the Care Standards Act 2000;
 - (d) any function of the Assembly exercisable by virtue of section 5(b) or 8(1) to (3) of the Care Standards Act 2000 in relation to independent hospitals, independent health clinics and independent medical agencies. 40

General

133 Offences by bodies corporate

- (1) This section applies where any offence under this Part is committed by a body corporate.
- (2) If the offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –
- (a) any director, manager, or secretary of the body corporate, or
 - (b) any person who was purporting to act in any such capacity,
- he (as well as the body corporate) shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly. 5
- (3) The reference in subsection (2) to a director, manager or secretary of a body corporate includes a reference –
- (a) to any other similar officer of the body; and
 - (b) where the body is a local authority or NHS body, to any officer or member of the authority or NHS body. 10
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134 Minor and consequential amendments

Schedule 8 (which makes minor and consequential amendments relating to this Part) has effect.

135 Interpretation of Part 2

- In this Part – 20
- “Audit Commission” means the Audit Commission for Local Authorities and the National Health Service in England and Wales;
- “the CHAI” means the Commission for Healthcare Audit and Inspection;
- “cross-border SHA” means a Special Health Authority performing functions in respect of England and Wales equally; 25
- “the CSCI” means the Commission for Social Care Inspection;
- “English local authority social service” means –
- (a) a service which is provided, in any place, by a local authority in England in the exercise of any of its social services functions;
 - (b) a service provided, in any place, by another person pursuant to arrangements made by a local authority in England in the exercise of its social services functions; 30
 - (c) a service which –
 - (i) is provided, in any place, by a local authority in England, or by another person pursuant to arrangements made by a local authority in England, under section 2(1)(b) of the Local Government Act 2000 (c. 22); and 35
 - (ii) is similar in nature to a service which could be provided by the authority in the exercise of any of its social services functions. 40
- “English NHS body” means –
- (a) a Primary Care Trust;
 - (b) a Strategic Health Authority;

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- (c) an NHS trust all or most of whose hospitals, establishments and facilities are situated in England;
- (d) a foundation trust;
- (e) a Special Health Authority performing functions only or mainly in respect of England; 5
- “financial year”, in relation to the CHAI or the CSCI, means –
- (a) the period beginning with the date on which that body is established and ending with the next 31st March following that date; and
- (b) each successive period of twelve months ending with 31st March; 10
- “health care” has the meaning given by section 40(2);
- “local authority” has the same meaning as in the Local Authority Social Services Act 1970 (c. 42) (see section 1 of that Act);
- “Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975 (c. 26); 15
- “NHS body” means –
- (a) an English NHS body;
- (b) a Welsh NHS body;
- (c) a cross-border SHA; 20
- “NHS trust” has the same meaning as in Part 1 of the 1977 Act;
- “prescribed” means prescribed by regulations made by –
- (a) the Secretary of State; or
- (b) in the case of sections 71, 98, 110 and 112, the Assembly;
- “regulator” means the Independent Regulator of NHS Foundation Trusts; 25
- “social services functions” has the same meaning as in the Local Authority Social Services Act 1970;
- “Welsh local authority social service” means –
- (a) a service provided, in any place, by a local authority in Wales in the exercise of any of its social services functions; 30
- (b) a service provided, in any place, by another person pursuant to arrangements made by a local authority in Wales in the exercise of its social services functions;
- (c) a service which –
- (i) is provided, in any place, by a local authority in Wales, or by another person pursuant to arrangements made by a local authority in Wales, under section 2(1)(b) of the Local Government Act 2000 (c. 22); and 35
- (ii) is similar in nature to a service which could be provided by the authority in the exercise of any of its social services functions; 40
- “Welsh NHS body” means –
- (a) a Local Health Board;
- (b) an NHS trust all or most of whose hospitals, establishments and facilities are situated in Wales; 45
- (c) a Special Health Authority performing functions only or mainly in respect of Wales.

136 References to the provision of health care

- (1) For the purposes of this Part, a person provides health care if he provides it—
 - (a) at the direction of the other person;
 - (b) in accordance with, or by virtue of, an agreement made by the other person (whether or not with the person providing the health care); or 5
 - (c) otherwise on behalf of the other person.
- (2) References in this section to the provision of health care include references to its provision jointly with another person.

PART 3

RECOVERY OF NHS CHARGES 10

NHS charges

137 Liability to pay NHS charges

- (1) This section applies if—
 - (a) a person makes a compensation payment to or in respect of any other person (the “injured person”) in consequence of any injury suffered by the injured person, and 15
 - (b) the injured person has—
 - (i) received NHS treatment at a health service hospital in respect of the injury,
 - (ii) been provided with NHS ambulance services as a result of the injury for the purpose of taking him to a health service hospital for NHS treatment (unless he was dead on arrival at that hospital), or 20
 - (iii) received treatment as mentioned in sub-paragraph (i) and been provided with ambulance services as mentioned in sub-paragraph (ii). 25
- (2) The person making the compensation payment is liable to pay the relevant NHS charges—
 - (a) in respect of—
 - (i) the treatment, in so far as received at a hospital in England or Wales, 30
 - (ii) the ambulance services, in so far as provided to take the injured person to such a hospital, to the Secretary of State,
 - (b) in respect of— 35
 - (i) the treatment, in so far as received at a hospital in Scotland,
 - (ii) the ambulance services, in so far as provided to take the injured person to such a hospital, to the Scottish Ministers.
- (3) “Compensation payment” means a payment, including a payment in money’s worth, made— 40
 - (a) by or on behalf of a person who is, or is alleged to be, liable to any extent in respect of the injury, or
 - (b) in pursuance of a compensation scheme for motor accidents,

- but does not include a payment mentioned in Schedule 9.
- (4) Subsection (1)(a) applies –
- (a) to a payment made –
 - (i) voluntarily, or in pursuance of a court order or an agreement, or otherwise, and 5
 - (ii) in the United Kingdom or elsewhere, and
 - (b) if more than one payment is made, to each payment.
- (5) “NHS treatment” means any treatment (including any examination of the injured person) other than –
- (a) treatment provided by virtue of section 18A(4) or 65 of the 1977 Act, section 57 of, or paragraph 14 of Schedule 7A to, the 1978 Act or paragraph 14 of Schedule 2 to the National Health Service and Community Care Act 1990 (c. 19) (accommodation and services for private patients), 10
 - (b) treatment provided at a hospital of an NHS foundation trust in pursuance of an undertaking to pay in respect of the treatment given by or on behalf of the injured person, 15
 - (c) treatment provided at a health service hospital by virtue of section 72 of the 1977 Act or section 64 of the 1978 Act (permission for use of national health service accommodation or facilities in private practice), or 20
 - (d) treatment provided by virtue of –
 - (i) section 16CA, 28C, 28K or 29 of the 1977 Act (primary dental services and personal or general medical or dental services), or
 - (ii) section 17C, 19 or 25 of the 1978 Act (personal or general medical or dental services). 25
- (6) In relation to any time before sections 157 and 159 come into force, the references in subsection (5)(d)(i) to sections 16CA and 28K of the 1977 Act are to be taken as a reference to section 35 of that Act (arrangements for general dental services). 30
- (7) “Relevant NHS charges” means the amount (or amounts) specified in a certificate of NHS charges –
- (a) issued under this Part, in respect of the injured person, to the person making the compensation payment, and
 - (b) in force. 35
- (8) “Compensation scheme for motor accidents” means any scheme or arrangement under which funds are available for the payment of compensation in respect of motor accidents caused, or alleged to have been caused, by uninsured or unidentified persons.
- (9) Regulations may amend Schedule 9 by omitting or modifying any payment for the time being specified in that Schedule. 40
- (10) This section applies in relation to any injury which occurs after the date on which this section comes into force.
- (11) For the purposes of this Part, it is irrelevant whether a compensation payment is made with or without an admission of liability. 45

Certificates of NHS charges

138 Applications for certificates of NHS charges

- (1) Before a person makes a compensation payment in consequence of any injury suffered by an injured person, he may apply for a certificate to the Secretary of State, the Scottish Ministers or both, according to whether he believes the relevant NHS charges payable by him (if any) would be due to the Secretary of State, the Scottish Ministers or both. 5
- (2) If the Secretary of State receives or the Scottish Ministers receive an application under subsection (1), he or they must arrange for a certificate to be issued as soon as is reasonably practicable (subject to section 139). 10
- (3) A certificate may provide that it is to remain in force –
 - (a) until a specified date,
 - (b) until the occurrence of a specified event, or
 - (c) indefinitely.
- (4) A person may apply under subsection (1) for a fresh certificate from time to time. 15
- (5) Subsection (2) does not require the Secretary of State or the Scottish Ministers to arrange for a fresh certificate to be issued to a person applying under subsection (4) if, when the application is received, a certificate issued to the applicant in respect of the injured person is still in force; but the Secretary of State or the Scottish Ministers (as the case may be) may arrange for a fresh certificate to be issued so as to have effect on the expiry of the current certificate. 20
- (6) If a certificate expires, the Secretary of State or the Scottish Ministers (as the case may be) may arrange for a fresh certificate to be issued without an application having to be made. 25
- (7) In the circumstances mentioned in subsection (8), a person who has made a compensation payment in consequence of an injury suffered by an injured person must apply for a certificate to the Secretary of State, the Scottish Ministers or both, according to whether he believes the relevant NHS charges payable by him (if any) would be due to the Secretary of State, the Scottish Ministers or both. 30
- (8) The circumstances are that –
 - (a) at the time the payment is made by the person –
 - (i) no certificate has been issued to him in respect of the injured person, or
 - (ii) if such a certificate has been issued to him, it is no longer in force, and
 - (b) no application for a certificate has been made by him during the prescribed period ending immediately before the day on which the compensation payment is made. 40
- (9) An application for a certificate must be made in the prescribed manner and, in the case of an application under subsection (7), within the prescribed period.
- (10) On receiving an application under subsection (7), the Secretary of State or the Scottish Ministers must arrange for a certificate to be issued as soon as is reasonably practicable (subject to section 139). 45

- (11) In this section and section 139, “relevant NHS charges” has the meaning given in section 137(7).

139 Section 138: supplementary

- (1) Subsection (2) applies if –
- (a) an application is made under subsection (1) or (7) of section 138 to the Secretary of State or the Scottish Ministers, and 5
 - (b) it appears to the Secretary of State or the Scottish Ministers that the relevant NHS charges payable by the applicant (if any) would be due to the Scottish Ministers or the Secretary of State (respectively) instead.
- (2) The Secretary of State or the Scottish Ministers (as the case may be) must refer the application to the Scottish Ministers or the Secretary of State (respectively), and the application is to be treated, for the purposes of this Part, as having been made to the Scottish Ministers or the Secretary of State (as the case may be). 10
- (3) Subsection (4) applies if –
- (a) an application is made under subsection (1) or (7) of section 138 to the Secretary of State or the Scottish Ministers, and 15
 - (b) it appears to the Secretary of State or the Scottish Ministers that the relevant NHS charges payable by the applicant (if any) would be due in part to him or them and in part to the Scottish Ministers or the Secretary of State (respectively). 20
- (4) The Secretary of State or the Scottish Ministers (as the case may be) must refer the application to the Scottish Ministers or the Secretary of State (respectively) in so far as the application relates to relevant NHS charges due to them or him, and the application is to be treated, for the purposes of this Part, as having been made to the Secretary of State in so far as it relates to relevant NHS charges due to him under subsection (2) of section 137 and to the Scottish Ministers in so far as it relates to relevant NHS charges due to them under that subsection. 25
- (5) A certificate may be issued under section 138 jointly by the Secretary of State and the Scottish Ministers specifying –
- (a) an amount (or amounts) for which a person is liable under subsection (2) of section 137 to the Secretary of State, and 30
 - (b) an amount (or amounts) for which that person is liable under that subsection to the Scottish Ministers,
- in respect of the same injured person in consequence of the same injury.
- (6) In the case of a certificate issued under section 138 specifying an amount (or amounts) as mentioned in paragraphs (a) and (b) of subsection (5), references in the following provisions of this Part to a certificate are to be taken as being to the certificate in so far as it relates to the liability to the Secretary of State or in so far as it relates to the liability to the Scottish Ministers (as the case may require). 35 40

140 Information contained in certificates

- (1) A certificate must specify the amount (or amounts) for which the person to whom it is issued is liable under section 137(2).
- (2) The amount (or amounts) to be specified is (or are) to be that (or those) set out in, or determined in accordance with, regulations, reduced if applicable in accordance with subsection (3). 45

- (3) If a certificate relates to a claim made by or on behalf of an injured person –
- (a) in respect of which a court in England, Wales or Scotland has ordered a reduction of damages in accordance with section 1 of the Law Reform (Contributory Negligence) Act 1945 (c. 28),
 - (b) in respect of which an officer of a court in England or Wales has entered or sealed an agreed judgement or order which specifies –
 - (i) that the damages are to be reduced to reflect the injured person’s share in the responsibility for the injury in question, and
 - (ii) the amount or proportion by which they are to be so reduced, or
 - (c) in the case of which the parties to any resulting action before a court in Scotland have executed a joint minute which specifies –
 - (i) that the action has been settled extra-judicially, and
 - (ii) the matters mentioned in paragraph (b)(i) and (ii),the amount (or amounts) specified in the certificate is (or are) to be that (or those) which would be so specified apart from this subsection, reduced by the same proportion as the reduction of damages.
- (4) If a certificate relates to an injured person who has not received NHS treatment at a health service hospital or been provided with NHS ambulance services in respect, or as a result, of the injury, it must indicate that no amount is payable to the Secretary of State or the Scottish Ministers (as the case may be) by reference to that certificate.
- (5) Regulations under subsection (2) may, in particular, provide –
- (a) that the amount, or the aggregate amount, specified in a certificate is not to exceed a prescribed sum,
 - (b) for different amounts to be specified in respect of different circumstances or areas,
 - (c) for cases in which an injured person receives treatment at two or more health service hospitals,
 - (d) for cases in which an injured person receives treatment at one or more health service hospitals and is provided with NHS ambulance services,
 - (e) for cases in which liability under section 137(2) is to be apportioned between two or more persons making compensation payments to or in respect of the same injured person in consequence of the same injury,
 - (f) for cases in which a fresh certificate is issued or a certificate is revoked as a result of a review under section 143 or an appeal under section 144 or 146,
 - (g) for the amount specified in a certificate issued by the Secretary of State or the Scottish Ministers to be adjusted to take into account any amount for which the person to whom the certificate is issued is liable under section 137(2), in respect of the same injured person in consequence of the same injury, in accordance with a certificate issued by the Scottish Ministers or the Secretary of State (respectively),
 - (h) for any matter requiring determination under or in consequence of the regulations to be determined by the Secretary of State or the Scottish Ministers (as the case may require),
- and in the case of paragraph (e) may make such provision by modifying this Part.

- (6) Any reference in subsection (5)(a) or (b) to any amount (or amounts) specified in a certificate are to the amount (or amounts) which would be so specified apart from subsection (3).
- (7) Regulations under subsection (2) which provide for cases mentioned in subsection (5)(e) may (among other things) provide in the case of each compensator for – 5
- (a) determining, or re-determining, the amount for which he is liable under section 137(2),
 - (b) giving credit for amounts already paid, and
 - (c) the payment by any person of any balance or the recovery from any person of any excess. 10
- (8) Regulations under subsection (2) which provide for cases mentioned in subsection (5)(f) may (among other things) provide in the case of any compensator for the matters mentioned in paragraphs (b) and (c) of subsection (7). 15
- (9) A person to whom a certificate is issued is entitled to such particulars of the manner in which any amount (or amounts) specified in the certificate has (or have) been determined as may be prescribed, if he applies to the Secretary of State or the Scottish Ministers (as the case may require) for those particulars.
- (10) Regulations under subsection (2) may be made so as to apply to any certificate issued after the time the regulations come into force, other than one relating to a compensation payment made before that time. 20

Recovery of NHS charges

141 Payment of NHS charges

- (1) If the certificate by reference to which an amount payable under section 137(2) is determined is issued before the settlement date, that amount must be paid before the end of the period of 14 days beginning with the settlement date. 25
- (2) If the certificate by reference to which an amount payable under section 137(2) is determined is issued on or after the settlement date, that amount must be paid before the end of the period of 14 days beginning with the day on which the certificate is issued. 30
- (3) “Settlement date” means the date on which the compensation payment is made.
- (4) This section is subject to section 142(2).

142 Recovery of NHS charges

- (1) This section applies if a person has made a compensation payment and either – 35
- (a) subsection (7) of section 138 applies but he has not applied for a certificate as required by that subsection, or
 - (b) he has not made payment, in full, of any amount due under section 137(2) by the end of the period allowed under section 141. 40
- (2) The Secretary of State, the Scottish Ministers or both, according to the circumstances of the case, may –

- (a) in a case within subsection (1)(a), issue the person who made the compensation payment with a certificate, and
- (b) in a case within subsection (1)(b), issue him with a copy of the certificate or (if more than one has been issued) the most recent one,
- and, in either case, issue him with a demand that payment of any amount due under section 137(2) be made immediately. 5
- (3) Subsections (5) and (6) of section 139 apply to certificates issued under subsection (2) above as they apply to certificates issued under section 138.
- (4) A demand issued under subsection (2) may be issued jointly by the Secretary of State and the Scottish Ministers specifying – 10
- (a) an amount due under subsection (2) of section 137 to the Secretary of State, and
- (b) an amount due under that subsection to the Scottish Ministers, in respect of the same injured person in consequence of the same injury.
- (5) In the case of a demand specifying amounts as mentioned in subsection (4)(a) and (b), references in the following provisions of this section to a demand are to be taken as being (as the case may require) to – 15
- (a) the demand in so far as it relates to any amount due to the Secretary of State, or
- (b) the demand in so far as it relates to any amount due to the Scottish Ministers, 20
- and related expressions are to be read accordingly.
- (6) The Secretary of State or the Scottish Ministers may recover the amount for which a demand for payment is made under subsection (2) from the person who made the compensation payment. 25
- (7) If the person who made the compensation payment resides or carries on business in England or Wales and a county court so orders, the amount demanded is recoverable by execution issued from the county court or otherwise as if it were payable under an order of that court.
- (8) If the person who made the compensation payment resides or carries on business in Scotland, the demand may be enforced as if it were an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland. 30
- (9) A document which states that it is a record of the amount recoverable under subsection (6) is conclusive evidence that the amount is so recoverable if it is signed by a person authorised to do so by the Secretary of State or the Scottish Ministers (as the case may be). 35
- (10) For the purposes of subsection (9), a document purporting to be signed by a person authorised to do so by the Secretary of State or the Scottish Ministers (as the case may be) is to be treated as so signed unless the contrary is proved. 40

Review and appeal

143 Review of certificates

- (1) The Secretary of State or the Scottish Ministers must review a certificate issued by him or them if the certificate relates to a claim made by or on behalf of an injured person – 45

- (a) in respect of which, after the certificate is issued, a court in England, Wales or Scotland orders a reduction of damages in accordance with section 1 of the Law Reform (Contributory Negligence) Act 1945 (c. 28),
- (b) in respect of which, after the certificate is issued, an officer of a court in England or Wales enters or seals an agreed judgement or order which specifies – 5
- (i) that the damages are to be reduced to reflect the injured person’s share in the responsibility for the injury in question, and
- (ii) the amount or proportion by which they are to be so reduced, or 10
- (c) in the case of which, after the certificate is issued, the parties to any resulting action before a court in Scotland execute a joint minute which specifies –
- (i) that the action has been settled extra-judicially, and
- (ii) the matters mentioned in paragraph (b)(i) and (ii), 15
- and notification of the order, judgement or minute has been given to the Secretary of State or the Scottish Ministers (as the case may be) in the prescribed manner.
- (2) If –
- (a) the Secretary of State and the Scottish Ministers have issued certificates to a person specifying an amount (or amounts) for which that person is liable under section 137(2) in respect of the same injured person in consequence of the same injury, and 20
- (b) either the Secretary of State or the Scottish Ministers subsequently adjusts or adjust the amount (or amounts) specified in the certificate issued by him or them on a review of, or an appeal against, that certificate, 25
- the other must review the certificate issued by him or them (as the case may be) if he is or they are satisfied that it is necessary or expedient to make consequential adjustments to that certificate. 30
- (3) The Secretary of State or the Scottish Ministers may review a certificate issued by him or them –
- (a) either within the prescribed period or in prescribed cases or circumstances, and
- (b) either on application made for the purpose or on his or their initiative. 35
- (4) On a review under this section, the Secretary of State or the Scottish Ministers may –
- (a) confirm the certificate,
- (b) issue a fresh certificate containing such variations as he considers or they consider appropriate, or 40
- (c) revoke the certificate.
- (5) Subsections (5) and (6) of section 139 apply to certificates issued under subsection (4)(b) above as they apply to certificates issued under section 138.

144 Appeal against a certificate

- (1) An appeal against a certificate may be made by the person to whom the certificate was issued on one or more of the following grounds – 45
- (a) that an amount (or amounts) specified in the certificate is (or are) incorrect,

- (b) that an amount (or amounts) so specified takes (or take) into account –
 - (i) treatment which is not NHS treatment received by the injured person, in respect of his injury, at a health service hospital,
 - (ii) ambulance services which are not NHS ambulance services provided to the injured person as a result of his injury, or
 - (iii) treatment as mentioned in sub-paragraph (i) and ambulance services as mentioned in sub-paragraph (ii),
 - (c) that the payment on the basis of which the certificate was issued is not a compensation payment.
- (2) No appeal may be made until –
 - (a) the claim against the person to whom the certificate was issued, which gives rise to the compensation payment, has been finally disposed of, and
 - (b) payment of the amount (or amounts) specified in the certificate has been made to the Secretary of State or the Scottish Ministers (as the case may be).
- (3) For the purposes of subsection (2)(a), if an award of damages in respect of a claim has been made under or by virtue of –
 - (a) section 32A(2)(a) of the Supreme Court Act 1981 (c. 54),
 - (b) section 12(2)(a) of the Administration of Justice Act 1982 (c. 53), or
 - (c) section 51(2)(a) of the County Courts Act 1984 (c. 28),(orders for provisional damages in personal injury cases), the claim is to be treated as having been finally disposed of.
- (4) Regulations may make provision –
 - (a) as to the manner in which, and the time within which, an appeal may be made,
 - (b) as to the procedure to be followed if an appeal is made,
 - (c) as to the circumstances in which appeals may be consolidated (including the consolidation of an appeal against a certificate issued by the Secretary of State with an appeal against a certificate issued by the the Scottish Ministers), and
 - (d) for the purpose of enabling an appeal to be treated as an application for a review under section 143.

145 Appeal tribunals

- (1) The Secretary of State or the Scottish Ministers must refer an appeal to an appeal tribunal constituted under Chapter 1 of Part 1 of the Social Security Act 1998 (c. 14). 35
- (2) In determining an appeal, the tribunal must take into account any decision of a court relating to the same, or any similar, issue arising in connection with the injury in question. 40
- (3) On an appeal, the tribunal may –
 - (a) confirm the amount or amounts specified in the certificate,
 - (b) specify any variations which are to be made on the issue of a fresh certificate under subsection (4), or
 - (c) declare that the certificate is to be revoked. 45

- (4) When the Secretary of State or the Scottish Ministers (as the case may be) has or have received the decision of the tribunal on an appeal, he or they must in accordance with that decision –
- (a) confirm the certificate,
 - (b) issue a fresh certificate, or
 - (c) revoke the certificate.
- (5) Subsections (5) and (6) of section 139 apply to certificates issued under subsection (4)(b) above as they apply to certificates issued under section 138.
- (6) Regulations under section 144 may (among other things) provide for the non-disclosure of medical advice or medical evidence given or submitted following a reference under subsection (1).

146 Appeal to Social Security Commissioner

- (1) An appeal may be made to a Commissioner against any decision of an appeal tribunal under section 145 on the ground that the decision was erroneous in point of law.
- (2) An appeal under this section may be made by –
- (a) the Secretary of State or the Scottish Ministers (as the case may be), or
 - (b) the person to whom the certificate was issued.
- (3) If an appeal is made under this section, subsections (7) to (12) of section 14 of the 1998 Act apply to the appeal as they apply to an appeal under that section (reading references to a tribunal as references to an appeal tribunal constituted as mentioned in section 145(1)).
- (4) In a case in which subsection (7) or (8)(b) of section 14 of the 1998 Act applies by virtue of subsection (3) above, subsections (2) to (4) of section 145 apply as they apply to an appeal determined on a reference under subsection (1) of that section.
- (5) In a case in which subsection (8)(a) of section 14 of the 1998 Act applies by virtue of subsection (3) above, section 145(4) applies as if the references to the decision of the tribunal on an appeal were references to the decision of the Commissioner on an appeal under this section.
- (6) In this section –
- “Commissioner” has the same meaning as in Chapter 2 of Part 1 of the 1998 Act, and
 - “the 1998 Act” means the Social Security Act 1998 (c. 14).

Information 35

147 Provision of information

- (1) If compensation is sought in consequence of any injury suffered by an injured person, such information with respect to the circumstances of the case as may be prescribed must be given by the following persons to the Secretary of State or the Scottish Ministers (as the case may require) –
- (a) the person against whom the claim is made and anyone acting on behalf of that person, whether or not proceedings have been commenced,

- (b) the injured person or, if the injured person has died, his personal representative,
 - (c) anyone not within paragraph (a) who is, or is alleged to be, liable to any extent in respect of the injury,
 - (d) if the claim is not made by the injured person, the person by whom it is made, 5
 - (e) anyone acting on behalf of the person within any of paragraphs (b) to (d),
 - (f) the responsible body of each health service hospital at which the injured person has received NHS treatment in respect of his injury, 10
 - (g) any ambulance trust which provided NHS ambulance services as a result of his injury.
- (2) A person who is required to give information under this section must do so—
- (a) in the prescribed manner, and
 - (b) within the prescribed period. 15
- (3) Regulations under this section may, in particular, require the provision of information about any NHS treatment which an injured person has received at a health service hospital and any NHS ambulance services provided to the injured person.
- (4) In this section— 20
- “ambulance trust” —
- (a) in relation to England or Wales, means—
 - (i) a National Health Service trust established under section 5 of the National Health Service and Community Care Act 1990 (c. 19), or 25
 - (ii) an NHS foundation trust,
 - (b) in relation to Scotland, means a Special Health Board established under section 2(1)(b) of the 1978 Act;
- “responsible body”, in relation to a health service hospital, means—
- (a) in the case of a hospital vested in— 30
 - (i) a National Health Service trust established under section 5 of the National Health Service and Community Care Act 1990 or section 12A of the 1978 Act, or
 - (ii) a Primary Care Trust,
 - (b) in any other case, the body responsible for the management of the trust, and 35
 - (b) in any other case, the body responsible for the management of the hospital.

148 Use of information held by the Secretary of State or the Scottish Ministers etc.

- (1) Subsection (2) applies to information which is held—
- (a) by the Secretary of State, or 40
 - (b) by a person providing services to the Secretary of State in connection with the provision of those services,
- for the purposes of, or for any purpose connected with, the exercise of functions under the Social Security (Recovery of Benefits) Act 1997 (c. 27).
- (2) The information may— 45
- (a) be used for the purposes of, or for any purpose connected with, the exercise of functions under this Part, and

- (b) be supplied to a qualifying person for use for those purposes.
- (3) In subsection (2), “qualifying person” means –
- (a) in the case of information held by the Secretary of State –
 - (i) a person providing services to the Secretary of State, or
 - (ii) the Scottish Ministers or a person providing services to the Scottish Ministers, or
 - (b) in the case of information held by a person providing services to the Secretary of State –
 - (i) the Secretary of State or another person providing services to the Secretary of State, or
 - (ii) the Scottish Ministers or a person providing services to the Scottish Ministers.
- (4) Subsection (5) applies to information which is held –
- (a) by the Secretary of State or the Scottish Ministers, or
 - (b) by a person providing services to the Secretary of State or the Scottish Ministers in connection with provision of those services,
- for the purposes of, or for any purpose connected with, the exercise of functions under this Part.
- (5) The information may –
- (a) be used for the purposes of, or for any purpose connected with, the exercise of functions under the Social Security (Recovery of Benefits) Act 1997 (c. 27), and
 - (b) be supplied to a qualifying person for use for those purposes.
- (6) In subsection (5), “qualifying person” means –
- (a) in the case of information held by the Secretary of State, a person providing services to the Secretary of State,
 - (b) in the case of information held by the Scottish Ministers, the Secretary of State or a person providing services to the Secretary of State,
 - (c) in the case of information held by a person providing services to the Secretary of State, the Secretary of State or another person providing services to the Secretary of State,
 - (d) in the case of information held by a person providing services to the Scottish Ministers, the Secretary of State or a person providing services to the Secretary of State.

Payments to hospitals or ambulance trusts 35

149 Payment of NHS charges to hospitals or ambulance trusts

- (1) If the Secretary of State receives or the Scottish Ministers receive a payment of relevant NHS charges under section 137(2) –
- (a) if the payment relates only to NHS treatment received at a health service hospital, he or they must pay the amount received to the responsible body of the health service hospital,
 - (b) if the payment relates only to the provision of NHS ambulance services, he or they must pay the amount received to the relevant ambulance trust,
 - (c) if the payment relates to NHS treatment received at more than one health service hospital, he or they must divide the amount received

- among the responsible bodies of the hospitals concerned in such manner as he considers or they consider appropriate,
- (d) if the payment relates to NHS treatment received at one or more health services hospitals and the provision of NHS ambulance services, he or they must divide the amount received among the responsible body or bodies of the hospital or hospitals and any relevant ambulance trusts concerned in such manner as he considers or they consider appropriate. 5
- (2) Subsection (1) does not apply to any amount received by the Secretary of State or the Scottish Ministers under section 137(2) which he is or they are required to repay in accordance with regulations under section 140(2). 10
- (3) Regulations under this section may –
- (a) make provision for the manner in which and intervals at which any payments due under this section are to be made,
- (b) make provision for cases where the responsible body of the health service hospital or relevant ambulance trust concerned has ceased to exist (including provision modifying this Part). 15
- (4) Any amounts received under this section by the responsible bodies of the health service hospitals concerned must be used for the purposes of providing goods and services for the benefit of patients receiving NHS treatment at those hospitals. 20
- (5) Any amounts received under this section by the relevant ambulance trusts concerned must be used for the purposes of NHS ambulance services.
- (6) In this section –
- “relevant ambulance trust” –
- (a) in relation to England or Wales, means – 25
- (i) the National Health Service trust established under section 5 of the National Health Service and Community Care Act 1990 (c. 19), or
- (ii) the NHS foundation trust, 30
- which is designated by the Secretary of State for the purposes of this section in relation to the health service hospital to which the injured person was taken for treatment,
- (b) in relation to Scotland, means the Special Health Board, established under section 2(1)(b) of the 1978 Act, which is designated by the Scottish Ministers for the purposes of this section in relation to the health service hospital to which the injured person was taken for treatment; 35
- “responsible body” has the meaning given in section 147(4).

Miscellaneous and general

- 150 Regulations governing lump sums, periodical payments etc 40**
- (1) Regulations may make provision (including provision modifying this Part) –
- (a) for cases to which section 137(2) applies in which two or more compensation payments in the form of lump sums are made by the same person in respect of the same injury,
- (b) for cases to which section 137(2) applies in which an agreement is entered into for the making of – 45

(i) periodical compensation payments (whether of an income or capital nature), or	
(ii) periodical compensation payments and lump sum compensation payments,	
(c) for cases in which the compensation payment to which section 137(2) applies is an interim payment of damages which a court orders to be repaid.	5
(2) Regulations made by virtue of subsection (1)(a) may (among other things) provide—	
(a) for giving credit for amounts already paid, and	10
(b) for the payment by any person of any balance or the recovery from any person of any excess.	
(3) Regulations may make provision modifying the application of this Part in relation to cases in which a payment into court is made and, in particular, may provide—	15
(a) for the making of a payment into court to be treated in prescribed circumstances as the making of a compensation payment,	
(b) for application for, and issue of, certificates.	
151 Liability of insurers	
(1) If a compensation payment is made in a case where—	20
(a) a person is liable to any extent in respect of the injury, and	
(b) the liability is covered to any extent by a policy of insurance,	
the policy is also to be treated as covering any liability of that person under section 137(2).	
(2) Liability imposed on the insurer by subsection (1) cannot be excluded or restricted.	25
(3) For that purpose excluding or restricting liability includes—	
(a) making the liability or its enforcement subject to restrictive or onerous conditions,	
(b) excluding or restricting any right or remedy in respect of the liability, or subjecting a person to any prejudice in consequence of his pursuing any such right or remedy, or	30
(c) excluding or restricting rules of evidence or procedure.	
(4) Regulations may in prescribed cases limit the amount of the liability imposed on the insurer by subsection (1).	35
(5) This section applies in relation to policies of insurance issued before (as well as those issued after) the date on which it comes into force.	
(6) References in this section to policies of insurance and their issue include references to contracts of insurance and their making.	
152 Power to apply Part 3 to treatment at non-health service hospitals	40
(1) Regulations may make provision for this Part to apply, with such modifications as may be prescribed, if—	
(a) a person makes a compensation payment as mentioned in section 137(1)(a), but	

- (b) the person to or in respect of whom the payment is made has –
 - (i) received treatment in respect of the injury at a qualifying hospital under an NHS arrangement,
 - (ii) been provided with NHS ambulance services as a result of the injury for the purpose of taking him to a qualifying hospital for treatment under an NHS arrangement (unless he was dead on arrival at that hospital), or 5
 - (iii) received treatment as mentioned in sub-paragraph (i) and been provided with NHS ambulance services as mentioned in sub-paragraph (ii), 10(subject to subsection (2)).
- (2) Subsection (1)(b) does not apply where the person to or in respect of whom the payment is made receives, or is taken to a hospital for, treatment which would be provided as mentioned in paragraph (a), (b) or (d) of section 137(5) if it were provided at a health service hospital. 15
- (3) In subsection (1), “NHS arrangement” means an arrangement or agreement between –
 - (a) the hospital in question or a body responsible for it, and
 - (b) any of the following –
 - (i) a Primary Care Trust, 20
 - (ii) a National Health Service trust established under section 5 of the National Health Service and Community Care Act 1990 (c. 19) or section 12A of the 1978 Act,
 - (iii) a Local Health Board,
 - (iv) a Health Board or Special Health Board established under section 2 of the 1978 Act, or 25
 - (v) an NHS foundation trust.
- (4) Regulations under subsection (1) may include provision excluding the application of sections 157 to 159 of the Road Traffic Act 1988 (c. 52) in such description of case as may be prescribed. 30
- (5) In this section “qualifying hospital” means a hospital (within the meaning of section 128(1) of the 1977 Act or section 108(1) of the 1978 Act) which is not a health service hospital.

153 The Crown

This Part binds the Crown. 35

154 Regulations

- (1) Any power to make regulations conferred by this Part is exercisable –
 - (a) in relation to England and Wales, by the Secretary of State; and
 - (b) in relation to Scotland, by the Scottish Ministers.
- (2) Regulations under section 144(4) may only be made by the Scottish Ministers with the consent of the Secretary of State. 40

155 Interpretation of Part 3

In this Part –

- “the 1978 Act” means the National Health Service (Scotland) Act 1978 (c. 29);
- “compensation payment” has the meaning given in section 137;
- “health service hospital” means a health service hospital within the meaning of the 1977 Act or the 1978 Act; 5
- “injured person” has the meaning given in section 137(1);
- “NHS ambulance services” means ambulance services provided under section 3(1)(c) of the 1977 Act or section 45 of the 1978 Act;
- “NHS treatment” has the meaning given in section 137(5);
- “prescribed” means prescribed by regulations. 10

156 Consequential and minor repeals

- (1) The Road Traffic (NHS Charges) Act 1999 (c. 3) shall cease to have effect.
- (2) In the Road Traffic Act 1988 (c. 52), in section 161(1), in the definition of “hospital”, paragraph (b) is omitted.

PART 4

15

DENTAL SERVICES

157 Provision of primary dental services

In the 1977 Act, after section 16C insert—

“Functions of Primary Care Trusts and Local Health Boards

- 16CA Primary dental services** 20
- (1) Each Primary Care Trust and Local Health Board must, to the extent that it considers it reasonable to do so, provide primary dental services within its area, or secure their provision within its area.
 - (2) For the purposes of this section, a Primary Care Trust or Local Health Board may (in addition to any other power conferred on it) provide primary dental services itself. 25
 - (3) Each Primary Care Trust and Local Health Board must publish information about such matters as may be prescribed in relation to the primary dental services for which it makes provision under this section.
 - (4) A body on which functions are conferred under this section must cooperate with any other such body in the discharge of their respective functions under this section. 30
 - (5) Regulations may provide that services of a prescribed description are, or are not, to be regarded as primary dental services for the purposes of this Part. 35
 - (6) Regulations under subsection (5) may in particular describe services by reference to the manner or circumstances in which they are provided.”

158 Dental public health

- (1) In the 1977 Act, after section 16CA (as inserted by section 157 above) insert –

“16CB Dental public health

- (1) A Primary Care Trust shall have such functions in relation to dental public health in England as may be prescribed. 5
- (2) A Local Health Board shall have such functions in relation to dental public health in Wales as may be prescribed.
- (3) The National Assembly for Wales shall have such functions in relation to dental public health in Wales as may be prescribed.
- (4) The functions of a Primary Care Trust under this section may be discharged – 10
- (a) by the Trust itself;
 - (b) by the Trust and one or more other Primary Care Trusts acting jointly; or
 - (c) by any other person or body in accordance with arrangements made by the Trust. 15
- (5) The functions of a Local Health Board under this section may be discharged –
- (a) by the Board itself;
 - (b) by the Board and one or more other Local Health Boards acting jointly; or 20
 - (c) by any other person or body in accordance with arrangements made by the Board.”
- (2) Section 5(1A) of the 1977 Act shall cease to have effect.

159 General dental services contracts

25

- (1) In the 1977 Act, after section 28J insert –

“General dental services contracts

28K General dental services contracts: introductory

- (1) A Primary Care Trust or Local Health Board may enter into a contract under which primary dental services are provided in accordance with the following provisions of this Part. 30
- (2) A contract under this section is called in this Act a “general dental services contract”.
- (3) Subject to any provision made by or under this Part, a general dental services contract may make such provision as may be agreed between the Primary Care Trust or Local Health Board and the contractor in relation to – 35
- (a) the services to be provided under the contract (which may include services which are not primary dental services),
 - (b) remuneration under the contract, and 40

- (c) any other matters.
- (4) In this Part, “contractor”, in relation to a general dental services contract, means any person entering into the contract with the Primary Care Trust or Local Health Board.
- 28L Requirement to provide certain primary dental services** 5
- (1) A general dental services contract must require the contractor or contractors to provide, for his or their patients, primary dental services of such descriptions as may be prescribed.
- (2) Regulations under subsection (1) may in particular describe services by reference to the manner or circumstances in which they are provided. 10
- 28M Persons eligible to enter into GDS contracts**
- (1) A Primary Care Trust or Local Health Board may, subject to such conditions as may be prescribed, enter into a general dental services contract with—
- (a) a dental practitioner; 15
- (b) a dental corporation;
- (c) two or more individuals practising in partnership where the conditions in subsection (2) are satisfied.
- (2) The conditions referred to in subsection (1)(c) in relation to a partnership are that— 20
- (a) at least one partner is a dental practitioner, and
- (b) any partner who is not a dental practitioner is either—
- (i) an NHS employee,
- (ii) a section 28C or section 17C employee, or
- (iii) a health care professional, not falling within sub-paragraphs (i) and (ii), who is providing services under this Act. 25
- (3) In this section—
- “dental corporation” means a body corporate which carries on the business of dentistry (within the meaning of section 40 of the Dentists Act 1984); 30
- “health care professional” means a person who is a member of a profession regulated by a body mentioned (at the time the contract in question is entered into) in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002; 35
- “NHS employee”, “section 28C employee” and “section 17C employee” have the same meanings as in section 28D above.
- 28N GDS contracts: payments**
- (1) The appropriate authority may give directions as to payments to be made under general dental services contracts. 40

- (2) A general dental services contract must require payments to be made under the contract in accordance with directions for the time being in force under this section.
- (3) Without prejudice to the generality of the power under subsection (1), a direction under that subsection may –
- (a) provide for payments to be made by reference to compliance with standards or the achievement of levels of performance;
 - (b) provide for payments to be made by reference to –
 - (i) any scheme or scale specified in the direction, or
 - (ii) a determination made by any person in accordance with factors specified in the direction;
 - (c) provide for the making of payments in respect of individual practitioners;
 - (d) provide that the whole or any part of a payment is subject to conditions (and may provide that payments are payable by a Primary Care Trust or Local Health Board only if it is satisfied as to certain conditions);
 - (e) make provision having effect from a date before the date of the direction, provided that, having regard to the direction as a whole, the provision is not detrimental to the persons to whose remuneration it relates.
- (4) Before giving a direction under subsection (1), the appropriate authority –
- (a) must consult any body appearing to the authority to be representative of persons to whose remuneration the direction would relate, and
 - (b) may consult such other persons as the authority thinks appropriate.
- (5) Section 18(1) and (3)(b) above apply in relation to directions under this section.
- (6) References in this section to payments include fees, allowances, reimbursements, loans and repayments.
- (7) In this section “appropriate authority” means –
- (a) the Secretary of State, in relation to a contract made by a Primary Care Trust;
 - (b) the National Assembly for Wales, in relation to a contract made by a Local Health Board.

280 GDS contracts: other required terms

- (1) A general dental services contract must contain such provision as may be prescribed (in addition to the provision required by the preceding provisions of this Part).
- (2) Regulations under subsection (1) may in particular make provision as to –
- (a) the manner in which, and standards to which, services are to be provided;
 - (b) the persons who perform services;
 - (c) the persons to whom services are to be provided;

- (d) the variation of contract terms (other than terms required by or under this Part);
 - (e) rights of entry and inspection (including inspection of clinical records and other documents);
 - (f) the circumstances in which, and the manner in which, the contract may be terminated; 5
 - (g) enforcement;
 - (h) the adjudication of disputes.
- (3) Regulations under subsection (2)(d) may make provision as to the circumstances in which a Primary Care Trust or Local Health Board may impose a variation of contract terms. 10

28P GDS contracts: disputes and enforcement

- (1) Regulations may make provision for the resolution of disputes as to the terms of a proposed general dental services contract.
- (2) Regulations under subsection (1) may make provision— 15
- (a) for the referral of the terms of the proposed contract to the Secretary of State or National Assembly for Wales; and
 - (b) for the Secretary of State or Assembly, or a person appointed by him or it, to determine the terms on which the contract may be entered into. 20
- (3) Regulations may make provision for a person or persons entering into a general dental services contract to be regarded as a health service body for any purposes of section 4 of the National Health Service and Community Care Act 1990, in circumstances where he or they so elect.
- (4) Regulations under subsection (3) may include provision as to the application of section 4 of that Act in cases where— 25
- (a) persons practising in partnership elect to become a health service body; and
 - (b) there is a change in the membership of the partnership.
- (5) Where— 30
- (a) by virtue of regulations under subsection (3), subsection (7) of section 4 of that Act applies in relation to a general dental services contract, and
 - (b) a direction as to payments is made under that provision in relation to the contract, 35
- the direction is to be enforceable in a county court (if the court so orders) as if it were a judgment or order of that court.”
- (2) Sections 35 and 36 of the 1977 Act (arrangements for general dental services) shall cease to have effect.

160 General dental services: transitional 40

- (1) The appropriate authority shall by order make transitional provision in respect of persons who, immediately before the coming into force of section 159, are providing services under section 35 of the 1977 Act (general dental services).

- (2) An order under this section may provide that, in such circumstances as the order may prescribe, a Primary Care Trust or Local Health Board must, if any such person so wishes, enter into a general dental services contract with him; and the order may make provision as to the terms of any such contract.
- (3) An order under this section may provide that, in such circumstances as the order may prescribe, a Primary Care Trust or Local Health Board must, if any such person so wishes, enter into a contract with him, containing such terms as the order may specify, for the provision of dental services. 5
- (4) An order under this section may make provision for the resolution of disputes in relation to any contract entered into, or proposed to be entered into, under subsection (2) or (3), including provision for the determination of disputes by the appropriate authority or a person appointed by the authority. 10
- (5) An order under this section may make provision in respect of a period beginning before the coming into force of the provision (or of section 159), provided that the provision is not as a whole detrimental to the remuneration of the persons to whom it relates. 15
- (6) In this section –
 “appropriate authority” means –
 (a) the Secretary of State, in relation to England; and
 (b) the Assembly, in relation to Wales; 20
 “general dental services contract” means a contract under section 28K of the 1977 Act (as inserted by section 159(1)).

161 Persons performing primary dental services

- (1) In the 1977 Act, after section 28P (as inserted by section 159 above) insert –

“28Q Persons performing primary dental services 25

- (1) Regulations may provide that a health care professional of a prescribed description may not perform any primary dental service for which a Primary Care Trust or Local Health Board is responsible unless he is included in a list maintained under the regulations by a Primary Care Trust or Local Health Board. 30
- (2) For the purposes of this section –
 (a) “health care professional” means a person who is a member of a profession regulated by a body for the time being mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002; 35
 (b) a Primary Care Trust or Local Health Board is responsible for a dental service if it provides the service, or secures its provision, by or under any enactment.
- (3) Regulations under this section may make provision in relation to lists under this section and in particular as to – 40
 (a) the preparation, maintenance and publication of a list;
 (b) eligibility for inclusion in a list;
 (c) applications for inclusion (including provision as to the Primary Care Trust or Local Health Board to which an

- application must be made, and for the procedure for applications and the documents to be supplied on application);
- (d) the grounds on which an application for inclusion may or must be granted or refused;
 - (e) requirements with which a person included in a list must comply (including the declaration of financial interests and gifts and other benefits); 5
 - (f) suspension or removal from a list (including provision for the grounds for, and consequences of, suspension or removal);
 - (g) payments to be made by a Primary Care Trust or Local Health Board in respect of a person suspended from the list (including provision for the amount of the payment, or the method of calculating the payment, to be determined by the Secretary of State or National Assembly for Wales, or a person appointed by him or it); 10 15
 - (h) the criteria to be applied in making decisions under the regulations;
 - (i) appeals against decisions made by a Primary Care Trust or Local Health Board under the regulations; and
 - (j) disclosure of information about applicants for inclusion, refusals of applications or suspensions or removals; 20
- and may make any provision corresponding to anything in sections 49F to 49N below.
- (4) Regulations under this section may, in particular, also provide for –
 - (a) a person’s inclusion in a list to be subject to conditions determined by a Primary Care Trust or Local Health Board; 25
 - (b) a Trust or Board to vary the conditions or impose different ones;
 - (c) the consequences of failing to comply with a condition (including removal from the list);
 - (d) the review by a Trust or Board of decisions made by it by virtue of the regulations. 30
 - (5) The imposition of such conditions must be with a view to –
 - (a) preventing any prejudice to the efficiency of the services to which the list relates, or
 - (b) preventing fraud.” 35
 - (2) In section 49M(7) of that Act, at the end there is inserted “; and regulations under this subsection may include provision of the kind referred to in section 49I(10)”.

162 Assistance and support

In the 1977 Act, after section 28Q (as inserted by section 161 above) insert – 40

“28R Assistance and support

- (1) A Primary Care Trust or Local Health Board may provide assistance or support to –
 - (a) any person providing, or proposing to provide primary dental services under a general dental services contract; 45

- (b) any person providing, or proposing to provide, such services in accordance with section 28C arrangements.
- (2) Assistance or support provided by a Primary Care Trust or Local Health Board under subsection (1) is to be provided on such terms, including terms as to payment, as the Trust or Board thinks fit. 5
- (3) In this section “assistance” includes financial assistance.”

163 Abolition of Dental Practice Board

The Dental Practice Board is abolished.

164 Special Health Authorities

- (1) In section 11 of the 1977 Act (Special Health Authorities), in subsection (1), at the end insert “or the National Health Service (Primary Care) Act 1997”. 10
- (2) In section 16B of that Act (exercise of functions by Primary Care Trusts), at the end insert—
 - “(4) The Secretary of State may by order make provision for the transfer to a Special Health Authority of the rights and liabilities of a Primary Care Trust under a general dental services contract in a case where the Authority exercises functions of the Trust in relation to the contract by virtue of subsection (2)(b) above (and for their transfer back to the Trust where the Authority ceases to exercise those functions).” 15
- (3) In section 16BC of that Act (exercise of functions by Local Health Boards), at the end insert—
 - “(4) The Assembly may by order make provision for the transfer to a Special Health Authority of the rights and liabilities of a Local Health Board under a general dental services contract in a case where the Authority exercises functions of the Board in relation to the contract by virtue of subsection (2)(b) above (and for their transfer back to the Board where the Authority ceases to exercise those functions).” 25

165 Charges for dental services

- (1) In the 1977 Act, for sections 78A to 79A substitute—
 - “79 Dental charging 30
 - (1) Regulations may provide for the making and recovery, in such manner as may be prescribed, of charges for relevant dental services.
 - (2) Regulations under subsection (1) may in particular include provision—
 - (a) specifying the amount, or maximum amount, of any charge (or aggregate charge in respect of the provision for two or more relevant dental services); 35
 - (b) for calculating the amount of any charge;
 - (c) for the variation of the amount, or maximum amount, of any charge in cases of a prescribed description;
 - (d) for any charge not to be payable in cases of a prescribed description; 40

- (e) for power to direct that a charge is not payable in any particular case;
- (f) for the repayment of any charge (including provision as to the persons by whom, and manner in which, repayments are to be made). 5
- (3) Regulations under subsection (1) may provide for sums which would otherwise be payable by a Primary Care Trust, Local Health Board or Special Health Authority to persons providing relevant dental services to be reduced by the amount of the charges authorised by the regulations. 10
- (4) This section is subject to Schedule 12ZA.
- (5) In this section and Schedule 12ZA “relevant dental services” means –
- (a) dental treatment provided –
- (i) under section 16CA(2) above (dental services provided by a Primary Care Trust or Local Health Board); 15
- (ii) under a general dental services contract;
- (iii) in accordance with section 28C arrangements; and
- (b) the supply of dentures and other dental appliances –
- (i) under this Act, or
- (ii) in accordance with a pilot scheme under Part 1 of the National Health Service (Primary Care) Act 1997. 20
- (6) Any reference in this section or Schedule 12ZA to the supply of an appliance includes a reference to its repair, adjustment, refitting or replacement and, in the case of dentures, to their being relined or having additions made to them.” 25
- (2) After Schedule 12 to that Act insert –

“SCHEDULE 12ZA

DENTAL CHARGING: EXEMPTIONS

General exemptions

- 1 (1) No charge is to be made under regulations under section 79(1) in respect of a relevant dental service provided for any person who at the prescribed time – 30
- (a) was under 18;
- (b) was under 19 and receiving qualifying full-time education;
- (c) was pregnant; or 35
- (d) had given birth to a child within the previous 12 months.
- (2) In sub-paragraph (1)(b), “qualifying full-time education” means full-time instruction at a recognised educational establishment or by other means accepted as comparable by the person or body making the regulations. 40
- (3) For the purposes of sub-paragraph (2) –
- (a) “recognised educational establishment” means an establishment recognised by the person or body making the

	regulations as being, or as comparable to, a school, college or university; and	
	(b) regulations may prescribe the circumstances in which a person is or is not to be treated as receiving full-time instruction.	5
(4)	In sub-paragraph (1)(d), “child” includes a still-born child (within the meaning of the Births and Deaths Registration Act 1953).	
(5)	This paragraph is subject to paragraph 3.	
<i>Repair and replacement</i>		
2	(1) No charge is to be made under regulations under section 79(1) in respect of the repair or replacement of any appliance.	10
	(2) This paragraph is subject to paragraph 3.	
<i>Exceptions to paragraphs 1 and 2</i>		
3	Paragraphs 1 and 2 do not apply in relation to –	
	(a) the repair or replacement of any appliance of a prescribed description; or	15
	(b) the repair or replacement of any appliance where it is determined in the prescribed manner –	
	(i) in any case, that the repair or replacement was necessitated by an act or omission of the person supplied; or	20
	(ii) in a case where the person supplied was under the age of 16, that the repair or replacement was necessitated by an act or omission, occurring while that person was under that age, of a person having charge of him.	25
<i>Hospital patients</i>		
4	No charge is to be made under regulations under section 79(1) in respect of any appliance supplied to a patient for the time being resident in a hospital.	30
5	Paragraph 4 does not apply where an appliance is supplied –	
	(a) under section 16CA(2) above;	
	(b) under a general dental services contract; or	
	(c) in accordance with section 28C arrangements.	
<i>Arrest of bleeding</i>		
6	No charge is to be made under regulations under section 79(1) in respect of the arrest of bleeding.	35
<i>Declarations and evidence</i>		
7	Regulations may provide, with respect to any exemption under this section, that it is to be a condition of the exemption that –	40
	(a) a declaration of the prescribed kind is made in the prescribed form and manner; or	

- (b) a certificate or other evidence of the prescribed kind is supplied in the prescribed form and manner.”

166 Minor and consequential amendments

Schedule 10 (which contains minor and consequential amendments relating to this Part) has effect. 5

PART 5

MISCELLANEOUS

167 Replacement of the Welfare Food Schemes

- (1) In the Social Security Act 1988 (c. 7), for section 13 (schemes for the distribution etc of welfare foods), substitute – 10

“13 Benefits under schemes for improving nutrition: pregnant women, mothers and children

- (1) Regulations may establish one or more schemes to provide benefits for prescribed descriptions of – 15
- (a) pregnant women,
 - (b) mothers, and
 - (c) children,
- with a view to helping and encouraging them to have access to, and to incorporate in their diets, food of a prescribed description.
- (2) Before establishing, or varying, a scheme the Secretary of State must consult the Scottish Ministers and the National Assembly for Wales (“the Assembly”). 20
- (3) A scheme may, in particular, specify requirements that must be satisfied – 25
- (a) before a person may become entitled to a benefit;
 - (b) for a beneficiary to remain entitled to a continuing benefit.
- (4) Requirements that may be specified include requiring a person (including someone who has parental responsibility for a beneficiary) – 30
- (a) to be registered under the scheme;
 - (b) to attend a hospital, clinic or doctor’s surgery determined in accordance with the scheme;
 - (c) where the beneficiary is a child, to take the child to a hospital, clinic or doctor’s surgery determined in accordance with the scheme; 35
 - (d) to allow herself, or a child of hers, to be examined by a doctor or nurse;
 - (e) to allow a visit to her home by a health professional or other prescribed description of person;
 - (f) to receive advice of a prescribed description about nutrition, diet or other matters relating to health. 40
- (5) A scheme may also include provision –

- (a) for a benefit to consist of food of a prescribed description being provided by –
 - (i) a person who supplies, or arranges for the supply of, food of that description for beneficiaries under the scheme; 5
 - (ii) a person providing a service (such as day care) for the recipient of the benefit; or
 - (iii) a health service body;
- (b) for the use of vouchers, or similar arrangements, in connection with the provision of benefits; 10
- (c) that a person taking part in the scheme, otherwise than as a beneficiary, must be registered under the scheme;
- (d) for the payment by the Secretary of State of sums to persons registered in accordance with a provision of a kind mentioned in paragraph (c), in respect of things provided or done by them in accordance with the scheme; 15
- (e) for the making of payments to such persons entitled to receive benefits as may be determined by or under the scheme;
- (f) for the delegation, in accordance with provisions of the scheme, of prescribed functions under the scheme; 20
- (g) for the scheme, or prescribed provisions of the scheme, to be administered on behalf of the Secretary of State by such health service body, or other description of body, as may be prescribed;
- (h) requiring prescribed categories of persons to take reasonable steps to provide – 25
 - (i) to a person authorised for the purpose in accordance with the scheme,
 - (ii) on production, if required, of evidence of his authority, such information or evidence as may be reasonably needed in connection with administering the scheme. 30
- (6) Provision of a kind mentioned in subsection (5)(h) may, in particular –
 - (a) require information or evidence to be provided in a legible form;
 - (b) authorise the taking of copies or making of extracts; 35
 - (c) require an explanation by the information provider of anything which he has provided;
 - (d) require an information provider to state, to the best of his knowledge and belief, where information or evidence that he has failed to provide is held. 40
- (7) The power to prescribe descriptions of food (conferred by subsection (1)) and the power to prescribe descriptions of advice (conferred by subsection (4)(f)) are to be exercised, in relation to the operation of a scheme in Wales, by regulations made by the Assembly.
- (8) The Secretary of State may give such directions – 45
 - (a) to a body administering a scheme (or part of a scheme),
 - (b) in relation to matters relating to the operation of the scheme (or that part of the scheme),as he considers appropriate.

-
- (9) The Assembly may, with the agreement of the Secretary of State, give such directions –
- (a) to a body administering a scheme (or part of a scheme),
 - (b) in relation to matters relating to the operation of the scheme (or that part of the scheme) in Wales,
- 5
- as it considers appropriate.
- (10) A scheme may direct that prescribed enactments relating to the administration of benefit under the Social Security Administration Act 1992 (c.5) (including enactments relating to offences and criminal proceedings) are to have effect for the purpose of administering the scheme subject to such modifications (if any) as may be prescribed.
- 10
- (11) In this section –
- “benefit”, in relation to a scheme, means a benefit under the scheme;
 - “children” has such meaning as may be prescribed;
 - “clinic” includes such arrangements (if any) for examining persons, treating patients or enabling advice or information to be given to persons, as may be prescribed;
 - “enactment” includes an Act of the Scottish Parliament and a provision made under an enactment;
 - “food” includes vitamins, minerals and other dietary supplements;
 - “health service body” and “health service professional” have such meaning as may be prescribed;
 - “information provider” means the person who is required to provide information or, where that person is a body corporate, any person who is, or at any time has been, an officer or employee of the body corporate;
 - “parental responsibility” has such meaning as may be prescribed;
 - “pregnant” includes recently pregnant;
 - “prescribed” means prescribed by regulations;
 - “regulations”, except in subsection (7), means regulations made by the Secretary of State;
 - “scheme” means a scheme made under this section.”
- 15
- 20
- 25
- 30
- (2) In section 15A of that Act –
- (a) in subsection (2), after the first “instrument” insert “made by the Secretary of State”; and
 - (b) omit subsection (3).
- 35
- 168 Appointments to certain health and social care bodies**
- (1) This section applies to a body (however established) which has functions relating to –
- (a) health;
 - (b) social care;
 - (c) the regulation of professions associated with health or social care.
- 40
- (2) The Secretary of State may direct a Special Health Authority to exercise so much of the appointments function relating to a body to which this section applies as is specified in the direction.
- 45

- (3) If the Secretary of State gives a direction under subsection (2) the 1977 Act has effect as if –
 - (a) the direction is a direction of the Secretary of State under section 16D of that Act;
 - (b) the function is exercisable by the Special Health Authority under section 16D. 5
- (4) If the Secretary of State gives a direction under subsection (2) in respect of a body which exercises functions in relation to any part of the United Kingdom other than England and Wales subsection (5) applies –
 - (a) at the time the direction is given; 10
 - (b) for the purposes of anything done by a Special Health Authority in pursuance of the direction.
- (5) Sections 11 and 16D of and (so far as relating to a Special Health Authority) Schedule 5 to the 1977 Act and any other provision of that Act which relates to the exercise of the function in pursuance of the direction must be taken to extend to any part of the United Kingdom in relation to which the body exercises functions. 15
- (6) The appointments function is any function exercisable by the Secretary of State in relation to –
 - (a) the appointment of persons to be members of a body to which this section applies; 20
 - (b) the removal (whether permanently or otherwise) of such persons from the membership of the body.
- (7) For the purposes of this section it is immaterial that a body has functions relating to matters other than those specified in subsection (1). 25
- (8) Schedule 11 amends certain enactments which provide for appointments to be made to certain bodies by or on the advice of the Privy Council.
- (9) If in the exercise of a power conferred by virtue of that Schedule the Privy Council gives a direction corresponding to a direction given by the Secretary of State under subsection (2) above, subsections (3) to (5) above apply for the purposes of the Privy Council’s direction as they apply for the purposes of a direction given by the Secretary of State. 30

169 Appointments to certain health and social care bodies: joint functions

- (1) This section applies if (apart from section 168) the appointments function in relation to a body is exercisable jointly or concurrently with a person who is not a Minister of the Crown. 35
- (2) A requirement to exercise the function jointly or concurrently does not prevent the Secretary of State from making a direction in relation to the body but he must not do so unless he first consults the other person.
- (3) If a direction is given as mentioned in subsection (2) so much of the functions of the Secretary of State and of the other person as are specified in the direction is exercisable by the Special Health Authority acting alone. 40
- (4) Subsections (2) and (3) do not apply if the other person is the Scottish Ministers but that does not prevent the Secretary of State from giving a direction under section 168 in relation to the exercise of any function he has. 45

- (5) Appointments function has the same meaning as in section 168.

170 Validity of clearance for employment in certain NHS posts

- (1) In section 7 of the Protection of Children Act 1999 (c. 14) (effect of inclusion of person on lists relating to suitability for child care positions) after subsection (3) there are inserted the following subsections – 5
- “(3A) This section does not apply in relation to an offer of relevant NHS employment if each of the following paragraphs applies in respect of the individual to whom the offer is made –
- (a) at the time the offer is made he is employed by an NHS body;
 - (b) that NHS body has ascertained that he is not included in the list kept under section 1 above or (during the period that he is employed by that body) another NHS body has ascertained that he is not included in the list; 10
 - (c) subsection (1A) (inserted by paragraph 26(2) of Schedule 4 to the Care Standards Act 2000) does not apply to him; 15
 - (d) he accepts the offer and for so long as he is employed in the employment to which the offer relates paragraph (c) applies.
- (3B) Relevant NHS employment is employment in a child care position with an NHS body.
- (3C) Each of the following is an NHS body – 20
- (a) a National Health Service trust;
 - (b) a Strategic Health Authority;
 - (c) an NHS foundation trust;
 - (d) a Health Authority;
 - (e) a Local Health Board; 25
 - (f) a Special Health Authority;
 - (g) a Primary Care Trust.”
- (2) In section 89 of the Care Standards Act 2000 (c. 14) (effect of inclusion of person on lists relating to suitability for care positions) after subsection (4) there are inserted the following subsections – 30
- “(4A) This section does not apply in relation to an offer of relevant NHS employment if each of the following paragraphs applies in respect of the individual to whom the offer is made –
- (a) at the time the offer is made he is employed by an NHS body;
 - (b) that NHS body has ascertained that he is not included in the list kept under section 81 above or (during the period that he is employed by that body) another NHS body has ascertained that he is not included in the list; 35
 - (c) subsection (2) does not apply to him;
 - (d) he accepts the offer and for so long as he is employed in the employment to which the offer relates paragraph (c) applies. 40
- (4B) Relevant NHS employment is employment in a care position with an NHS body.
- (4C) Each of the following is an NHS body –
- (a) a National Health Service trust; 45

- (b) a Strategic Health Authority;
 - (c) an NHS foundation trust;
 - (d) a Health Authority;
 - (e) a Local Health Board;
 - (f) a Special Health Authority; 5
 - (g) a Primary Care Trust.”
- (3) Section 7(3A)(b) of the Protection of Children Act 1999 (c. 14) has effect until the coming into force of paragraph 121 of Schedule 21 to the Education Act 2002 (c. 32) as if for “the list kept under section 1 above” there is substituted “any of the lists mentioned in subsection (1)(a)”. 10

171 Loans by Secretary of State to NHS trusts

- (1) Paragraph 1 of Schedule 3 to the National Health Service and Community Care Act 1990 (c. 19) (borrowings of NHS trusts) is amended as follows.
- (2) In sub-paragraph (6), the words “, with the consent of the Treasury,” are omitted. 15

PART 6

FINAL PROVISIONS

172 Financial provisions

There shall be paid out of money provided by Parliament –

- (a) *any expenditure incurred by the Secretary of State by virtue of this Act; and* 20
- (b) *any increase attributable to this Act in the sums payable out of money so provided under any other Act.*

173 Interpretation

In this Act –

- “the 1977 Act” means the National Health Service Act 1977 (c. 49); 25
- “the Assembly” means the National Assembly for Wales.

174 Orders and regulations

- (1) Any order or regulations under this Act –
 - (a) may make different provision for different purposes; and
 - (b) may make incidental, supplementary, consequential, transitory or transitional or saving provision. 30
- (2) Any power to make regulations conferred by this Act (as well as being exercisable in relation to all cases to which it extends) may be exercised in relation to all those cases subject to exceptions or in relation to any particular case or class of case. 35
- (3) Before making any regulations under Part 3 the Secretary of State must consult the Assembly.
- (4) Any power to make an order or regulations under this Act is exercisable by statutory instrument

- (5) A statutory instrument containing an order or regulations under this Act made by the Secretary of State (apart from an order under section 177) is subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) A statutory instrument containing regulations under Part 3 made by the Scottish Ministers is subject to annulment in pursuance of a resolution of the Scottish Parliament. 5

175 Repeals and revocations

The enactments mentioned in Schedule 12 (which include provisions of Acts of the Scottish Parliament) are repealed or revoked to the extent specified.

176 Wales 10

- (1) In Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), any reference to an Act which is amended by this Act shall (as from the time when the Act is so amended) be treated as referring to that Act as amended by this Act.
- (2) Subsection (1) does not affect the power to make further Orders varying or omitting any reference to an Act which is amended by this Act. 15

177 Commencement

- (1) Subject to this section –
 (a) the provisions of Parts 1 to 5, and
 (b) section 175 and Schedule 12, 20
 shall come into force on such day as the appropriate authority may by order appoint.
- (2) The appropriate authority is –
 (a) in relation to Part 1, and section 175 and Schedule 12 so far as relating to that Part, the Secretary of State; 25
 (b) in relation to Part 2 –
 (i) for section 37 and Schedule 6, sections 45 to 48 and 56, Chapter 5, sections 99 to 102, Chapter 8, sections 111, 113, 119, 120 and 128, section 134 and Schedule 8 so far as relating to the Commission for Social Care Inspection, and section 175 and Schedule 12 so far as relating to those provisions, the Secretary of State; 30
 (ii) for section 42, Chapters 4 and 6, sections 106, 110, 112, 129 to 132 and section 175 and Schedule 12 so far as relating to those provisions, the Assembly; 35
 (iii) for sections 103 to 105, the Secretary of State, in relation to England, and the Assembly, in relation to Wales; and
 (iv) for the other provisions of the Part, and section 175 and Schedule 12 so far as relating to those provisions, the Secretary of State after consulting the Assembly; 40
 (c) in relation to Part 3, and section 175 and Schedule 12 so far as relating to that Part –
 (i) in relation to England and Wales, the Secretary of State after consulting the Assembly; and

- (ii) in relation to Scotland, the Scottish Ministers with the consent of the Secretary of State;
 - (d) in relation to section 163, and section 175 and Schedule 12 so far as relating to section 163, the Secretary of State;
 - (e) in relation to the other provisions of Part 4, and section 175 and Schedule 12 so far as relating to those provisions—
 - (i) in relation to England, the Secretary of State; and
 - (ii) in relation to Wales, the Assembly;
 - (f) in relation to Part 5, and section 175 and Schedule 12 so far as relating to that Part, the Secretary of State.
- (3) Different days may be appointed for different purposes.
- (4) Subsection (1) does not apply in relation to any provision of this Act so far as it confers power to make an order or regulations, or to section 154.

178 Transitional or transitory provision and savings

- (1) The appropriate authority may by order make such transitional or transitory provisions and savings as the authority considers appropriate in connection with the coming into force of any provision of this Act. 15
- (2) For the purposes of this section “appropriate authority”, in relation to any provision of this Act, means the authority which is the appropriate authority in relation to that provision for the purposes of section 177. 20
- (3) An order under this section may modify any Act (including, in relation to Part 3, an Act of the Scottish Parliament) or subordinate legislation.
- (4) Nothing in any transitional or transitory provisions and savings contained in this Act restricts the power under this section to make other transitional provisions and savings. 25

179 Supplementary and consequential provision

- (1) The appropriate authority may by order made such supplementary, incidental or consequential provision as he or it thinks appropriate for the purposes of, in consequence of or for giving full effect to any provision of this Act.
- (2) For the purposes of this section “appropriate authority”, in relation to any provision of this Act, means the authority which is the appropriate authority in relation to that provision for the purposes of section 177. 30
- (3) An order under this section may modify any Act (including, in relation to Part 3, an Act of the Scottish Parliament) or subordinate legislation.
- (4) The power under this section is not restricted by any other provision of this Act. 35

180 Extent

- (1) The amendment or repeal of any provision by this Act has the same extent as the provision being amended or repealed.
- (2) Subject to that and except as provided below this Act extends to England and Wales only. 40

- (3) The following provisions also extend to Scotland –
- (a) Part 3, except for section 150(3);
 - (b) sections 167, 168 and 169 and Schedule 11;
 - (c) this Part.
- (4) The following provisions also extend to Northern Ireland – 5
- (a) sections 119 and 120;
 - (b) sections 168, 169 and Schedule 11;
 - (c) this Part.

181 Short title

This Act may be cited as the Health and Social Care (Community Health and Standards) Act 2003. 10

SCHEDULES

SCHEDULE 1

Section 1

CONSTITUTION OF PUBLIC BENEFIT CORPORATIONS

Requirement for a constitution

- | | | |
|---|--|---|
| 1 | (1) A public benefit corporation is to have a constitution. | 5 |
| | (2) As well as any provision authorised or required to be made by this Schedule, the constitution may make further provision (other than provision as to the powers of the corporation) consistent with this Schedule. | |
| 2 | The constitution is to name the corporation. | |

Members 10

- | | | |
|---|---|----|
| 3 | (1) The members of a public benefit corporation are to be individuals who –
(a) live in the area specified for the purpose in the constitution (“the public constituency”), or
(b) are employed by the corporation (“the staff constituency”). | |
| | (2) The constitution may also provide for the public constituency to comprise individuals who have attended any of the corporation’s hospitals as patients (including individuals attending as the carer of a patient). | 15 |
| | (3) Sub-paragraph (1)(a) does not apply to a person who is eligible for membership of the staff constituency. | |
| 4 | The constitution is to require a minimum number of members of each constituency. | 20 |
| 5 | (1) A person may not be a member of a public benefit corporation unless he has agreed to pay a sum not exceeding £1 to the corporation. | |
| | (2) A person may not be a member of a public benefit corporation if –
(a) he has been adjudged bankrupt or has made a composition or arrangement with his creditors,
(b) he has within the preceding five years been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of three months (without the option of a fine) was imposed on him. | 25 |
| | (3) The constitution may make further provision as to the circumstances in which a person may not be a member. | 30 |

Board of Governors

- | | | |
|---|---|--|
| 6 | (1) A public benefit corporation is to have a board of governors. | |
|---|---|--|

-
- (2) Only the following may be members of the board –
- (a) members of the corporation, and
 - (b) individuals appointed under the following provisions who do not fall within paragraph 5(2)(a) or (b).
- (3) The members of the board other than the appointed members are to be chosen by election. 5
- (4) If contested, the election must be by postal ballot.
- 7 (1) More than half of the members of the board of governors are to be elected by the public constituency.
- (2) At least one member of the board is to be elected by the staff constituency. 10
 - (3) At least one member of the board is to be appointed by a Primary Care Trust for which the corporation provides goods or services.
 - (4) If any of the corporation’s hospitals includes a medical or dental school provided by a university, at least one member of the board is to be appointed by that university. 15
- 8 (1) A member of the board of governors elected by the public constituency or the staff constituency may hold office for a period of three years.
- (2) Such a member is to be eligible for re-election at the end of that period.
 - (3) But a person elected to membership of the board ceases to hold office if he ceases to be a member of the relevant constituency. 20
- 9 The corporation may pay travelling and other expenses to members of the board of governors at rates decided by the corporation.
- 10 The constitution is to provide for the chairman of the corporation or (in his absence) another person to preside at meetings of the board of governors.
- 11 (1) The constitution is to provide for meetings of the board of governors to be open to members of the public. 25
- (2) But the constitution may provide for members of the public to be excluded from a meeting for special reasons.
- 12 (1) The constitution is to make provision as to –
- (a) the conduct of elections for membership of the board, 30
 - (b) the appointment of persons to membership,
 - (c) the practice and procedure of the board,
 - (d) the removal of a member from office.
- (2) The constitution may make further provision about the board.
- Directors* 35
- 13 (1) A public benefit corporation is to have a board of directors.
- (2) The constitution is to provide for all the powers of the corporation to be exercisable by the board of directors on its behalf.
 - (3) But the constitution may provide for any of those powers to be delegated to a committee of directors or to an executive director. 40
- 14 (1) The board is to consist of –
- (a) executive directors, one of whom is to be the chief executive and another the finance director,

- (b) non-executive directors, one of whom is to be the chairman.
- (2) Only a member of the public constituency is eligible for appointment as a non-executive director.
- 15 (1) It is for the board of governors at a general meeting to appoint or remove the non-executive directors. 5
Removal of a non-executive director under this sub-paragraph requires the approval of three-quarters of the members of the board.
- (2) It is for the non-executive directors to appoint or remove the chief executive.
- (3) It is for the chief executive to appoint or remove the executive directors.
- (4) An appointment or removal under sub-paragraph (2) or (3) requires the approval of a majority of the board of governors voting at a general meeting. 10
- 16 (1) It is for the board of governors at a general meeting to decide the remuneration and allowances, and the other terms and conditions of office, of the non-executive directors.
- (2) The corporation is to establish a committee of non-executive directors to decide the remuneration and allowances, and the other terms and conditions of office, of the executive directors. 15

Register of members etc.

- 17 (1) A public benefit corporation is to have – 20
- (a) a register of members showing, in respect of each member, the constituency to which he belongs,
- (b) a register of members of the board of governors,
- (c) a register of directors.
- (2) The constitution may make further provision about the registers including, in particular, admission to, and removal from, the registers. 25
- 18 (1) The following documents of a public benefit corporation are to be available for inspection by members of the public free of charge at all reasonable times –
- (a) a copy of the current constitution,
- (b) a copy of the current authorisation, 30
- (c) the register of members, the register of members of the board of governors and the register of directors,
- (d) a copy of the latest annual accounts and of any report of the auditor on them,
- (e) a copy of the latest annual report, 35
- (f) a copy of the latest information as to its forward planning,
- (g) a copy of any notice given under section 23 or 24.
- (2) Any person who requests it is to be provided with a copy of or extract from any of the above documents.
- (3) If the person requesting the copy or extract is not a member of the corporation, the corporation may impose a reasonable charge for doing so. 40

Auditor

- 19 (1) A public benefit corporation is to have an auditor.

- (2) It is for the board of governors to appoint or remove the auditor at a general meeting of the board.
- (3) The corporation is to establish a committee of non-executive directors to monitor the exercise of the auditor’s functions.

Accounts

5

20 (1) A public benefit corporation is to keep accounts in such form as the regulator may with the approval of the Treasury direct.

(2) The accounts are to be audited by the corporation’s auditor.

(3) But the Comptroller and Auditor General may examine –

(a) the accounts,

(b) any records relating to them, and

(c) any report of the auditor on them.

10

21 (1) A public benefit corporation is to prepare in respect of each financial year annual accounts in such form as the regulator may with the approval of the Treasury direct.

15

(2) In preparing its annual accounts, the corporation is to comply with any directions given by the regulator with the approval of the Treasury as to –

(a) the methods and principles according to which the accounts are to be prepared,

(b) the information to be given in the accounts.

20

(3) In determining the form and content of the annual accounts the regulator is to aim to ensure that the accounts present a true and fair view.

(4) The corporation must –

(a) lay a copy of the annual accounts, and any report of the auditor on them, before Parliament, and

(b) once it has done so, send copies of those documents to the regulator and the registrar of companies.

25

(5) In this paragraph and paragraph 23 “financial year” means –

(a) the period beginning with the date on which the corporation is authorised under section 6 and ending with the next 31st March, and

(b) each successive period of twelve months beginning with 1st April.

30

Annual reports and forward plans

22 (1) A public benefit corporation is to prepare annual reports and send them to the regulator and the registrar of companies.

(2) The reports are to give any information the regulator requires.

35

(3) It is for the regulator to decide –

(a) the form of the reports,

(b) when the reports are to be sent to him,

(c) the periods to which the reports are to relate.

23 (1) A public benefit corporation is to give information as to its forward planning in respect of each financial year to the regulator.

40

(2) The information is to be prepared by the directors after consulting the board of governors.

Meeting of board of governors to consider annual accounts and reports

- 24 The following documents are to be presented to the board of governors of a public benefit corporation at a general meeting –
- (a) the annual accounts,
 - (b) any report of the auditor on them, 5
 - (c) the annual report.

Instruments etc.

- 25 (1) The constitution is to make provision for the authentication of the fixing of the corporation's seal.
- (2) A document purporting to be duly executed under the corporation's seal or to be signed on its behalf is to be received in evidence and, unless the contrary is proved, taken to be so executed or signed. 10

SCHEDULE 2

Section 2

INDEPENDENT REGULATOR OF NHS FOUNDATION TRUSTS

Regulator's terms of appointment 15

- 1 (1) The regulator holds office for the period determined by the Secretary of State on his appointment (or re-appointment) to the office.
- (2) But –
- (a) the regulator may at any time resign his office by giving notice to the Secretary of State, 20
 - (b) the Secretary of State may at any time remove him from office on the ground of incapacity or misbehaviour.
- (3) Subject to that, the regulator holds and vacates office on the terms determined by the Secretary of State.

Remuneration and pensions 25

- 2 (1) *The Secretary of State is to pay to the regulator –*
- (a) *such remuneration, and*
 - (b) *such travelling and other allowances,*
- as the Secretary of State may determine.*
- (2) *In the case of any such person who holds or has held office as regulator as the Secretary of State may determine, the Secretary of State is to pay –*
- (a) *such pension, allowance or gratuity to or in respect of him, or*
 - (b) *such contributions or payments towards provision for such a pension, allowance or gratuity,*
- as the Secretary of State may determine.* 30 35

Staff

- 3 (1) The regulator may, after consulting the Minister for the Civil Service as to numbers and terms and conditions of service, appoint such staff as the regulator may determine.
- (2) The members of staff must include a deputy to the regulator who is to act as regulator – 5
- (a) during any vacancy in that office, or
- (b) if the regulator is absent, subject to suspension or unable to act.
- (3) Sub-paragraph (4) applies where – 10
- (a) a person is, by reference to employment as a member of the regulator’s staff, a participant in a scheme under section 1 of the Superannuation Act 1972 (c. 11), and
- (b) he is appointed as regulator.
- (4) In such a case the Minister for the Civil Service may determine that the person’s term of office as regulator is to be treated for the purposes of the scheme as service as a member of staff (whether or not any benefits are payable by virtue of paragraph 2(2)). 15

Delegation of functions

- 4 Anything which the regulator is authorised or required to do may be done by a member of his staff if authorised by the regulator (generally or specifically) for that purpose. 20

Finance

- 5 *The Secretary of State may make contributions towards the regulator’s expenses.*

Reports and other information

- 6 (1) As soon as possible after the end of each financial year, the regulator must prepare an annual report on how he has exercised his functions during the year. 25
- (2) The regulator must send a copy of the report to the Secretary of State who must lay it before Parliament.
- (3) The regulator must provide the Secretary of State with such other reports and information relating to the exercise of the regulator’s functions as he may require. 30
- (4) “Financial year” means – 35
- (a) the period beginning with the date on which a person is first appointed as regulator and ending with the next 31st March, and
- (b) each successive period of twelve months beginning with 1st April.

Seal and evidence

- 7 The application of the regulator’s seal is to be authenticated by his signature.
- 8 A document purporting to be duly executed under the regulator’s seal or to be signed on his behalf is to be received in evidence and, unless the contrary is proved, taken to be so executed or signed. 40

Amendments

- 9 In Schedule 2 to the Parliamentary Commissioner Act 1967 (c. 13) (departments and authorities subject to investigation), there is inserted at the appropriate place –
“The office of the Independent Regulator of NHS Foundation Trusts.” 5
- 10 In Part 3 of Schedule 1 to the House of Commons Disqualification Act 1975 (c. 24) (disqualifying offices), there is inserted at the appropriate place –
“Independent Regulator of NHS Foundation Trusts.”
- 11 In Part 3 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (c. 25) (disqualifying offices), there is inserted at the appropriate place –
“Independent Regulator of NHS Foundation Trusts.” 10

SCHEDULE 3

Section 25

TRANSFER OF STAFF

15

- 1 An order under section 25(3) may provide for the transfer of employees of an NHS foundation trust to a person mentioned in that subsection.
- 2 The contract of employment of an employee transferred under such an order –
(a) is not terminated by the transfer, 20
(b) has effect from the date of transfer as if originally made between the employee and the transferee.
- 3 Where an employee is so transferred –
(a) all the rights, powers, duties and liabilities of the trust under or in connection with the contract of employment are by virtue of this paragraph transferred to the transferee on the date of transfer, and 25
(b) anything done before that date by or in relation to the trust in respect of that contract or the employee is to be treated from that date as having been done by or in relation to the transferee.
This paragraph does not prejudice the generality of paragraph 2. 30
- 4 But if the employee informs the trust or the proposed transferee that he objects to the transfer –
(a) paragraphs 2 and 3 do not apply, and
(b) the contract of employment is terminated immediately before the date of transfer but the employee is not to be treated, for any purpose, as having been dismissed by the trust. 35
- 5 This Schedule does not prejudice any right of an employee to terminate his contract of employment if (apart from the change of employer) a substantial change is made to his detriment in his working conditions.
- 6 In this Schedule, “date of transfer” means the date decided under the order for the transfer of the employee. 40

SCHEDULE 4

Section 32

AMENDMENTS RELATING TO NHS FOUNDATION TRUSTS

The Voluntary Hospitals (Paying Patients) Act 1936 (c. 17)

- 1 The Voluntary Hospitals (Paying Patients) Act 1936 is amended as follows.
- 2 In section 1 (definitions), in the definition of “voluntary hospital”, after “NHS trust” there is inserted “, an NHS foundation trust”. 5

The National Assistance Act 1948 (c. 29)

- 3 The National Assistance Act 1948 is amended as follows.
- 4 In section 24 (authority liable for provision of accommodation), in subsection (6), for “or an NHS trust” there is substituted “, an NHS trust or an NHS foundation trust”. 10

The Public Records Act 1958 (c. 51)

- 5 The Public Records Act 1958 is amended as follows.
- 6 In Schedule 1 (definition of public records), in the Table in Part 1, in the entry relating to the Department of Health, in the second column, for “and National Health Service trusts” there is substituted “, National Health Service trusts and NHS foundation trusts”. 15

The Human Tissue Act 1961 (c. 54)

- 7 The Human Tissue Act 1961 is amended as follows.
- 8 In section 1 (removal of parts of bodies for medical purposes), in subsection (4A)(b), for “or NHS trust” there is substituted “, NHS trust or NHS foundation trust”. 20

The Abortion Act 1967 (c. 87)

- 9 The Abortion Act 1967 is amended as follows.
- 10 In section 1 (medical termination of pregnancy), in subsection (3), after “National Health Service trust” there is inserted “or an NHS foundation trust”. 25

The Leasehold Reform Act 1967 (c. 88)

- 11 The Leasehold Reform Act 1967 is amended as follows.
- 12 In section 28 (retention or assumption of land required for public purposes)– 30
- (a) in subsection (5), for “and any National Health Service trust” there is substituted “, any National Health Service trust and any NHS foundation trust”,
- (b) in subsection (6)(c), for “or National Health Service trust” there is substituted “, National Health Service trust or NHS foundation trust”. 35

The Health Services and Public Health Act 1968 (c. 46)

- 13 The Health Services and Public Health Act 1968 is amended as follows.
- 14 In section 63 (provisions of instruction for officers of hospital authorities etc. employed, or contemplating employment, in certain activities connected with health or welfare), in subsection (5B), the “and” at the end of paragraph (bbb) is omitted and after paragraph (c) there is inserted – 5
“(d) NHS foundation trusts”.

The Employers’ Liability (Compulsory Insurance) Act 1969 (c. 57)

- 15 The Employers’ Liability (Compulsory Insurance) Act 1969 is amended as follows. 10
- 16 In section 3 (employers exempted from insurance), in subsection (2)(a), after “1978,” there is inserted “an NHS foundation trust,”.

The Local Government Act 1972 (c. 70)

- 17 The Local Government Act 1972 is amended as follows.
- 18 In section 113 (placing of staff of local authorities at disposal of other local authorities), in subsection (1A), for “or NHS trust” (in each place) there is substituted “, NHS trust or NHS foundation trust”. 15

The Race Relations Act 1976 (c. 74)

- 19 The Race Relations Act 1976 is amended as follows.
- 20 In Schedule 1A (bodies and other persons subject to general statutory duty), after paragraph 8 there is inserted – 20
“8A An NHS foundation trust.”

The National Health Service Act 1977 (c. 49)

- 21 The 1977 Act is amended as follows.
- 22 In section 18A (provision of services etc. by PCTs), in subsection (6)(a), after “NHS contracts” there is inserted “or under agreements or arrangements made with NHS foundation trusts”. 25
- 23 In section 22 (co-operation between health authorities and local authorities), in subsection (1A), the “or” at the end of paragraph (cc) is omitted and after paragraph (d) there is inserted – 30
“(e) an NHS foundation trust”.
- 24 In section 28 (supply of goods and services by local authorities), in subsection (3)– 35
(a) for “and NHS trusts” (in both places) there is substituted “, NHS trusts and NHS foundation trusts”,
(b) for “and the National Health Service and Community Care Act 1990” there is substituted “, the National Health Service and Community Care Act 1990 and Part 1 of the Health and Social Care (Community Health and Standards) Act 2003”.

25	In section 28A (power to make payments towards expenditure on community services), in subsection (2B), for “or NHS trust” there is substituted “, NHS trust or NHS foundation trust”.	
26	In section 63 (hospital accommodation on part payment), in subsection (1C), at the end there is inserted “or an NHS foundation trust”.	5
27	In section 65 (accommodation and services for private patients), in subsection (4), at the end there is inserted “or an NHS foundation trust”.	
28	In section 81 (charges for more expensive supplies), in paragraph (a), for “or an NHS trust” there is substituted “, an NHS trust or an NHS foundation trust”.	10
29	In section 82 (charges for repairs and replacements in certain cases), in paragraph (a), for “or an NHS trust” there is substituted “, an NHS trust or an NHS foundation trust”.	
30	In section 83A (remission and repayment of charges and payment of travelling expenses), in subsection (1) –	15
	(a) in paragraph (b), for “or an NHS trust” there is substituted “, an NHS trust or an NHS foundation trust”,	
	(b) in paragraph (c), after “NHS trust” there is inserted “or an NHS foundation trust”.	
31	In section 84 (inquiries), in subsection (1), at the end there is inserted “or Part 1 of the Health and Social Care (Community Health and Standards) Act 2003”.	20
32	In section 91 (private trusts for hospitals), in subsection (3), after “NHS trust” (in each place) there is inserted “NHS foundation trust”.	
33	In section 92 (further transfers of trust property) –	25
	(a) in subsection (1A), after “NHS trust” (in both places) there is inserted “NHS foundation trust”,	
	(b) in subsection (7), before “a Primary Care Trust” there is inserted “an NHS foundation trust and”.	
34	In section 96 (trusts: supplementary provisions), any reference to sections 90 to 95 of the 1977 Act includes section 22(1) to (3) of this Act.	30
35	In section 96A (powers of health bodies to raise money by appeals etc.), after subsection (11) there is inserted –	
	“(12) This section has effect in relation to an NHS foundation trust as it has effect in relation to an NHS trust, but as if the reference in subsection (5A) to section 11(1) of the National Health Service and Community Care Act 1990 included a reference to section 22 of the Health and Social Care (Community Health and Standards) Act 2003.”	35
36	In section 103 (special arrangement as to payment of remuneration), in subsection (3)(a), after “NHS trust” there is inserted “or an NHS foundation trust”.	40
37	In section 105 (payments for certain medical examinations), in subsection (2)(b), after “NHS trust,” there is inserted “NHS foundation trust,”.	

- 38 In section 122 (recovery of charges), in subsection (1), after “1990” there is inserted “or Part 1 of the Health and Social Care (Community Health and Standards) Act 2003”.
- 39 In section 125 (protection of members and officers of authorities) –
- (a) after paragraph (c) there is inserted – 5
“(d) an NHS foundation trust,”,
 - (b) for the words following “this Act” there is substituted “, the National Health Service and Community Care Act 1990 and Part 1 of the Health and Social Care (Community Health and Standards) Act 2003”. 10
- 40 In section 128 (interpretation and construction), in subsection (1), in the definition of “health service hospital”, for “or an NHS trust” there is substituted “, an NHS trust or an NHS foundation trust”.
- 41 In Schedule 5A (Primary Care Trusts), in paragraph 20(1), after “NHS trust” there is inserted “, an NHS foundation trust”. 15
- 42 In Schedule 8A (local pharmaceutical services schemes), in paragraph 1(8), after “NHS trust” there is inserted “, an NHS foundation trust”.
- 43 In Schedule 12A (expenditure of Health Authorities and Primary Care Trusts), in paragraph 7(3), after “NHS trust” there is inserted “or an NHS foundation trust”. 20

The Acquisition of Land Act 1981 (c. 67)

- 44 (1) An NHS foundation trust may be authorised to purchase land compulsorily for the purposes of its functions by means of an order –
- (a) made by the trust, and
 - (b) confirmed by the Secretary of State. 25
- (2) The Acquisition of Land Act 1981 is to apply to the compulsory purchase of land under this paragraph.
- (3) But no order is to be made by an NHS foundation trust under Part 2 of that Act with respect to any land unless the proposal to acquire it compulsorily –
- (a) is submitted to the Secretary of State in such form, and together with such information, as he may require, and
 - (b) is approved by him. 30
- 45 The Acquisition of Land Act 1981 is amended as follows.
- 46 In section 16 (statutory undertakers’ land excluded from compulsory purchase), in subsection (3), after paragraph (b) there is inserted – 35
“(ba) an NHS foundation trust;”.
- 47 In section 17 (local authority and statutory undertakers’ land), in subsection (4), in the definition of “statutory undertakers”, after paragraph (aa) there is inserted –
“(aab) an NHS foundation trust.” 40

The Mental Health Act 1983 (c. 20)

- 48 The Mental Health Act 1983 is amended as follows.

49	In section 12 (general provisions as to medical recommendation), in subsection (3), at the end there is inserted “or to be accommodated, by virtue of an undertaking to pay in respect of the accommodation, in a hospital vested in an NHS foundation trust”.	
50	In section 19 (regulations as to transfer of patients), in subsection (3), after “National Health Service trust” (in both places) there is inserted “, NHS foundation trust”.	5
51	In section 23 (discharge of patients) –	
	(a) in subsection (3), after “National Health Service trust,” (in both places) there is inserted “NHS foundation trust,”	10
	(b) in subsection (4), after “trust” (in the first place it occurs) there is inserted “(other than an NHS foundation trust),”	
	(c) after subsection (5), there is inserted –	
	“(6) The powers conferred by this section on any NHS foundation trust may be exercised by any three or more non-executive directors of the board of the trust authorised by the board in that behalf.”	15
52	In section 24 (visiting and examination by patients), in subsection (3), for “or National Health Service trust” (in both places) there is substituted “, National Health Service trust or NHS foundation trust”.	20
53	In section 32 (regulations for purposes of Part 2), in subsection (3), for “or National Health Service trusts” there is substituted “, National Health Service trusts or NHS foundation trusts”.	
54	In section 139 (protection for acts done in pursuance of this Act), in subsection (4), at the end there is inserted “or NHS foundation trust”.	25
55	In section 145 (interpretation), in subsection (1), after paragraph (bb) of the definition of “the managers” there is inserted –	
	“(bc) in relation to a hospital vested in an NHS foundation trust, the trust;”.	
	<i>The National Audit Act 1983 (c. 44)</i>	30
56	The National Audit Act 1983 is amended as follows.	
57	In section 6 (public departments etc.), in subsection (3)(b), at the end there is inserted “and any NHS foundation trust”.	
	<i>The Public Health (Control of Disease) Act 1984 (c. 22)</i>	
58	The Public Health (Control of Disease) Act 1984 is amended as follows.	35
59	In section 13 (regulations for control of certain diseases), in subsection (4)(a), for “or National Health Service trusts” there is substituted “, National Health Service trusts or NHS foundation trusts”.	
60	In section 37 (removal to hospital of person with notifiable disease), in subsection (1)(c), after “NHS trust,” there is inserted “NHS foundation trust;”.	40

- 61 In section 41 (removal to hospital of inmate of common lodging-house with notifiable disease), in subsection (1)(c), after “NHS trust,” there is inserted “NHS foundation trust”.

The Disabled Persons (Services, Consultation and Representation) Act 1986 (c. 33)

- 62 The Disabled Persons (Services, Consultation and Representation) Act 1986 is amended as follows. 5
- 63 In section 2 (rights of authorised representatives of disabled persons), in subsection (5)(a), after “1990” there is inserted “or by an NHS foundation trust”.
- 64 In section 7 (persons discharged from hospital), in subsection (9), in the definition of “the managers” – 10
- (a) in paragraph (a)(i), after “National Health Service trust” there is inserted “, an NHS foundation trust”,
 - (b) in paragraph (cc), after “that trust;” there is inserted – 15
 - “(cd) in relation to a hospital vested in an NHS foundation trust, means the board of directors of that trust;”.

The Company Directors Disqualification Act 1986 (c. 46)

- 65 The Company Directors Disqualification Act 1986 is amended as follows.
- 66 After section 22B there is inserted –
- “22C Application of Act to NHS foundation trusts 20**
- (1) This Act applies to NHS foundation trusts as it applies to companies within the meaning of this Act.
 - (2) References in this Act to a company, or to a director or officer of a company, include, respectively, references to an NHS foundation trust or to a director or officer of the trust; but references to shadow directors are omitted. 25
 - (3) In the application of Schedule 1 to the directors of an NHS foundation trust, references to the provisions of the Insolvency Act or the Companies Act include references to the corresponding provisions of Part 1 of the Health and Social Care (Community Health and Standards) Act 2003.” 30

The AIDS (Control) Act 1987 (c. 33)

- 67 The AIDS (Control) Act 1987 is amended as follows.
- 68 In section 1 (periodical reports on matters relating to AIDS and HIV) – 35
- (a) in subsection (1)(b)(iv), after “NHS trust” there is inserted –
 - “(iva) each NHS foundation trust;”,
 - (b) in subsection (2)(b), after “NHS Trust” there is inserted “, NHS foundation trust”.

The Copyright, Designs and Patents Act 1988 (c. 48)

- 69 The Copyright, Designs and Patents Act 1988 is amended as follows.
- 70 In section 48 (material communicated to the Crown in the course of public business), in subsection (6), after “1978” there is inserted “and an NHS foundation trust”. 5

The Road Traffic Act 1988 (c. 52)

- 71 The Road Traffic Act 1988 is amended as follows.
- 72 In section 144 (exceptions from requirement of third-party insurance), in subsection (2), after paragraph (db) there is inserted – 10
“(dc) to an ambulance owned by an NHS foundation trust, at a time when the vehicle is being driven under the owner’s control,”.

The Children Act 1989 (c. 41)

- 73 The Children Act 1989 is amended as follows.
- 74 In section 24 (persons qualifying for advice and assistance), in subsection (2)(d)(ii), after “trust” there is inserted “or an NHS foundation trust”. 15
- 75 In section 24C (information), in subsection (2)(c), after “trust” there is inserted “or an NHS foundation trust”.
- 76 In section 27 (co-operation between authorities), in subsection (3)(d), for “or National Health Service trust” there is substituted “, National Health Service trust or NHS foundation trust”. 20
- 77 In section 47 (local authority’s duty to investigate), in subsection (11)(d), for “or National Health Service trust” there is substituted “, National Health Service trust or NHS foundation trust”.
- 78 In section 80 (inspection of children’s homes etc. by persons authorised by Secretary of State) – 25
(a) in subsection (1)(d), for “or National Health Service trust” there is substituted “, National Health Service trust or NHS foundation trust”,
(b) in subsection (5)(e), after “National Health Service trust” there is inserted “, NHS foundation trust”. 30
- 79 In section 85 (children accommodated by health authorities and local education authorities), in subsection (1), after “National Health Service trust” there is inserted “, NHS foundation trust”.
- 80 In Schedule 2 (local authority support for children and families), in paragraph 1A(3), after paragraph (b) there is inserted – 35
“(ba) every NHS foundation trust which manages a hospital (within the meaning of the Health and Social Care (Community Health and Standards) Act 2003) in the authority’s area;”. 40

The National Health Service and Community Care Act 1990 (c. 19)

- 81 The 1990 Act is amended as follows.
- 82 In section 21 (schemes for meeting losses and liabilities etc. of certain health service bodies) –
- (a) in subsection (2), after “NHS trusts;” there is inserted – 5
“*(ba) NHS foundation trusts;*”;
 - (b) in subsections (3)(a) and (4)(b), for “or NHS trust” there is substituted “, NHS trust or NHS foundation trust”;
 - (c) in subsection (4), at the end there is inserted – 10
“but the Secretary of State may not make a direction under paragraph (a) above in relation to an NHS foundation trust”;
 - (d) in subsection (5), for “or NHS trust” there is substituted “, NHS trust or NHS foundation trust”.
- 83 In Schedule 2 (NHS trusts), in paragraph 30, in sub-paragraph (1), after paragraph (bbc) there is inserted – 15
“(bbd) an NHS foundation trust, or”.

The Town and Country Planning Act 1990 (c. 8)

- 84 Sections 238 to 240 of the Town and Country Planning Act 1990 (use and development of consecrated land and burial grounds) apply to consecrated land and land comprised in a burial ground which an NHS foundation trust holds for any of its purposes as if – 20
- (a) the trust were a statutory undertaker, and
 - (b) that land had been the subject of a relevant acquisition by the trust.

The Access to Health Records Act 1990 (c. 23)

- 85 The Access to Health Records Act 1990 is amended as follows. 25
- 86 In section 11 (interpretation), in the definition of “health service body”, the “or” before paragraph (d) is omitted and after that paragraph there is inserted –
- “(e) an NHS foundation trust;”.

The Water Industry Act 1991 (c. 56) 30

- 87 The Water Industry Act 1991 is amended as follows.
- 88 In Schedule 4A (premises that are not to be disconnected for non-payment of charges), in paragraph 16, at the end there is inserted “or by an NHS foundation trust”.

The London Local Authorities Act 1991 (c. xiii) 35

- 89 The London Local Authorities Act 1991 is amended as follows.
- 90 In section 4 (interpretation of Part 2), in paragraph (d) of the definition of “establishment for special treatment”, after “1990” there is inserted “or by an NHS foundation trust”.

The Health Service Commissioners Act 1993 (c. 46)

- 91 The Health Service Commissioners Act 1993 is amended as follows.
- 92 In section 2 (the bodies subject to investigation), in subsection (1), after paragraph (da) there is inserted –
“(db) NHS foundation trusts,”. 5

The Vehicle Excise and Registration Act 1994 (c. 22)

- 93 The Vehicle Excise and Registration Act 1994 is amended as follows.
- 94 In Schedule 2 (exempt vehicles), in paragraph 7, after the “or” at the end of paragraph (b) there is inserted –
“(ba) an NHS foundation trust, or”. 10

The Value Added Tax Act 1994 (c. 23)

- 95 The Value Added Tax Act 1994 is amended as follows.
- 96 In Schedule 8 (zero-rating), in the Notes to Group 12, in paragraph (5H), after paragraph (e) there is inserted –
“(eaa) an NHS foundation trust;”. 15

The Employment Rights Act 1996 (c. 18)

- 97 The Employment Rights Act 1996 is amended as follows.
- 98 In section 50 (right to time off for public duties), in subsection (8), after paragraph (a) there is inserted –
“(ab) an NHS foundation trust,”. 20
- 99 In section 218 (change of employer), in subsection (10), after paragraph (c) there is inserted –
“(ca) NHS foundation trusts,”.

The Housing Grants, Construction and Regeneration Act 1996 (c. 53)

- 100 The Housing Grants, Construction and Regeneration Act 1996 is amended as follows. 25
- 101 In section 3 (ineligible applicants), in subsection (2)(f), for “or NHS trust” there is substituted “, NHS trust or NHS foundation trust”.

The Education Act 1996 (c. 56)

- 102 The Education Act 1996 is amended as follows. 30
- 103 In section 332 (duty of Health Authority, a Primary Care Trust or National Health Service trust to notify parent etc.), in subsection (1), for “or a National Health Service trust” there is substituted “, a National Health Service trust or an NHS foundation trust”.

The Data Protection Act 1998 (c. 29) 35

- 104 The Data Protection Act 1998 is amended as follows.

- 105 In section 69 (meaning of “health professional”), in subsection (3), after paragraph (f) there is inserted –
“(fa) an NHS foundation trust;”.

The Health Act 1999 (c. 8)

- 106 The Health Act 1999 is amended as follows. 5
- 107 In section 31 (arrangements between NHS bodies and local authorities), in subsection (8), in the definition of “NHS body”, for “or NHS trust” there is substituted “, NHS trust or NHS foundation trust”.

The Care Standards Act 2000 (c. 14)

- 108 The Care Standards Act 2000 is amended as follows. 10
- 109 In section 42 (power to extend the application of Part 2), in subsection (2)(b)(ii), after “NHS trusts” there is inserted “, NHS foundation trusts”.
- 110 In section 121 (general interpretation), in subsection (1), in the definition of “National Health Service body”, after “National Health Service trust,” there is inserted “an NHS foundation trust,”. 15

The Freedom of Information Act 2000 (c. 36)

- 111 The Freedom of Information Act 2000 is amended as follows.
- 112 In Part 3 of Schedule 1 (National Health Service), after paragraph 40 there is inserted –
“40A An NHS foundation trust.” 20

The Health and Social Care Act 2001(c. 15)

- 113 The Health and Social Care Act 2001 is amended as follows.
- 114 In section 7 (functions of overview and scrutiny committees) –
(a) in subsection (3)(b), at the end there is inserted “or to the Independent Regulator of NHS Foundation Trusts (“the regulator”);” 25
(b) in subsection (3)(c), at the end there is inserted “(including provision as to circumstances in which the relevant authority or the regulator may require consultation on those matters in accordance with the regulations);” 30
(c) in subsection (4), for “or NHS trust” there is substituted “, NHS trust or NHS foundation trust”.
- 115 In section 28 (pilot schemes: local pharmaceutical services), in subsection (7), after “NHS trust” there is inserted “, an NHS foundation trust”.
- 116 In section 33 (NHS contracts), in subsection (1), after “body corporate” there is inserted “(other than an NHS foundation trust)”. 35

The International Development Act 2002 (c. 1)

- 117 The International Development Act 2002 is amended as follows.

- 118 In Schedule 1 (statutory bodies to which section 9 applies), there is inserted at the appropriate place –
“An NHS foundation trust”.

The National Health Service Reform and Health Care Professions Act 2002 (c. 17)

- 119 The National Health Service Reform and Health Care Professions Act 2002 is amended as follows. 5
- 120 In section 23 (joint working with the prison service), in subsection (5), in the definition of “NHS bodies”, after “NHS trusts,” there is inserted “NHS foundation trusts,”.

The Adoption and Children Act 2002 (c. 38) 10

- 121 The Adoption and Children Act 2002 is amended as follows.
- 122 In section 8 (adoption support agencies), in subsection (2)(d), for “or NHS trust” there is substituted “, NHS trust or NHS foundation trust”.

The Nationality, Immigration and Asylum Act 2002 (c. 41)

- 123 The Nationality, Immigration and Asylum Act 2002 is amended as follows. 15
- 124 In section 133 (medical inspectors), in subsection (4)(a), after sub-paragraph (ii) there is inserted –
“(iia) an NHS foundation trust,”.

SCHEDULE 5

Section 36(3)

CHAI: SUPPLEMENTARY 20

Status

- 1 (1) The CHAI is not to be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown.
- (2) The CHAI’s property is not to be regarded as property of, or property held on behalf of, the Crown. 25

General powers and duties

- 2 (1) The CHAI may do anything which appears to it to be necessary or expedient for the purpose of, or in connection with, the exercise of its functions.
- (2) That includes, in particular – 30
- (a) co-operating with other public authorities in the United Kingdom,
- (b) acquiring and disposing of land and other property,
- (c) entering into contracts, and
- (d) providing training.
- (3) It is the duty of the CHAI to carry out its functions effectively, efficiently and economically. 35

Chairman and other members

- 3 (1) The CHAI is to consist of—
- (a) a chairman appointed by the Secretary of State,
 - (b) a member appointed by the Assembly who appears to the Assembly to be suited to make the interests of Wales his special care, and 5
 - (c) other members appointed by the Secretary of State.
- (2) The Secretary of State may in the prescribed manner remove from office any person appointed by him under sub-paragraph (1)(a) or (c) if (and only if) he is satisfied that one of the conditions specified in sub-paragraph (4) is satisfied in relation to that person. 10
- (3) The Assembly may in the prescribed manner remove from office the person appointed by it under sub-paragraph (1)(b) if (and only if) the Assembly is satisfied that the conditions specified in sub-paragraph (4) is satisfied in relation to that person.
- (4) The conditions referred to in sub-paragraphs (2) and (3) above in relation to a person are that— 15
- (a) he is unable or unfit to carry out the duties of his office;
 - (b) he is failing to carry out the duties of his office;
 - (c) he has become disqualified from holding office.
- (5) The Secretary of State may by regulations make provision as to— 20
- (a) the appointment of the chairman and other members (including the number, or limits on the number, of members who may be appointed and any conditions to be fulfilled for appointment), and
 - (b) subject to this paragraph, the tenure of office of the chairman and other members (including the circumstances in which they cease to hold office, become disqualified from holding office or may be suspended from office). 25
- (6) Regulations under sub-paragraph (5)(b) relating to the suspension of a person from office may only provide for suspension where it appears to the Secretary of State that one of the conditions referred to in sub-paragraph (4) is or may be satisfied in relation to that person. 30
- (7) The Secretary of State must consult the Assembly before exercising any of his functions under this section.
- (8) The Assembly may direct a Special Health Authority to exercise any function conferred on it by or under this paragraph. 35
- (9) If directions are given under sub-paragraph (8), the National Health Service Act 1977 (c. 49) has effect as if—
- (a) the directions were directions under section 16D of that Act for the exercise of functions relating to the health service and, accordingly,
 - (b) the functions were exercisable by the Special Health Authority under that section. 40

Remuneration of chairman and other members

- 4 (1) The CHAI may pay to its chairman, or to any other member, such remuneration and allowances as the Secretary of State may determine.
- (2) If the Secretary of State so determines, the CHAI must pay or make provision for the payment of such pension, allowance or gratuities as the 45

Secretary of State may determine to or in respect of a person who is or has been the chairman or other member of the CHAI.

- (3) If the Secretary of State determines that there are special circumstances that make it right for a person ceasing to hold office as chairman of the CHAI to receive compensation, the CHAI must pay to him, or make provision for the payment to him of, such compensation as the Secretary of State may determine. 5
- (4) The Secretary of State must consult the Assembly before exercising any of his functions under this section.

Employees 10

- 5 (1) The CHAI must appoint a chief executive (to be known as the “Chief Inspector of Healthcare”), who is to be an employee of the CHAI and is to be responsible to it for the general exercise of its functions.
- (2) The CHAI may appoint such other employees as it considers appropriate.
- (3) Employees of the CHAI are to be appointed on such terms and conditions as it may determine. 15
- (4) Without prejudice to its other powers, the CHAI may pay, or make provision for the payment of –
- (a) pensions, allowances or gratuities, or
 - (b) compensation for loss of employment or reduction of remuneration, 20
- to or in respect of its employees.

Procedure

- 6 (1) The CHAI may –
- (a) appoint such committees and sub-committees (which may consist of or include persons who are not members of the CHAI) as it thinks fit; 25
 - (b) pay such remuneration and allowances to members of its committees and sub-committee as it thinks fit.
- (2) The CHAI may in all other respects regulate its own procedure.
- (3) The validity of the proceedings of the CHAI is not affected by any defect in the appointment of a member or any vacancy in membership. 30

Discharge of functions

- 7 (1) The CHAI may arrange for –
- (a) any of its committees, sub-committees, members or employees, or
 - (b) any other person,
- to exercise any of its functions on its behalf. 35
- (2) If the CHAI arranges for the discharge of any function as mentioned in subparagraph (1)(b), the arrangements may include provision with respect to the payment of remuneration and allowances to, or amounts in respect of, such persons.

Assistance

- 8 (1) The CHAI may arrange for such persons as it thinks fit to assist it in the discharge of any of its functions in relation to a particular case or class of case.
- (2) Such arrangements may include provision with respect to the payment of remuneration and allowances to, or amounts in respect of, such persons. 5

Payments and loans

- 9 (1) *The Secretary of State may make payments out of money provided by Parliament to the CHAI of such amounts, at such times and on such conditions (if any) as he considers appropriate.* 10
- (2) *The Assembly may make payments to the CHAI of such amounts, at such times and on such conditions (if any) as it considers appropriate.*
- (3) *The Secretary of State may, with the approval of the Treasury, make loans out of money provided by Parliament to the CHAI on such terms (including terms as to repayment and interest) as he may determine.* 15
- (4) *The Assembly may make loans to the CHAI on such terms (including terms as to repayment and interest) as it may determine.*
- (5) *Except as provided by this paragraph, the CHAI has no power to borrow money.*

Accounts

- 10 (1) The CHAI must keep its accounts in such form as the Secretary of State may determine. 20
- (2) The CHAI must prepare annual accounts in respect of each financial year in such form as the Secretary of State may determine.
- (3) The CHAI must send copies of the annual accounts to the Secretary of State and the Comptroller and Auditor General within such period after the end of the financial year to which the accounts relate as the Secretary of State may determine. 25
- (4) The Comptroller and Auditor General must examine, certify and report on the annual accounts and must lay copies of the accounts and of his report before Parliament. 30

Seal and evidence

- 11 The application of the seal of the CHAI must be authenticated by the signature—
- (a) of any member of the CHAI, or
- (b) of any other person who has been authorised by the CHAI (whether generally or specifically) for that purpose. 35
- 12 A document purporting to be duly executed under the seal of the CHAI or to be signed on its behalf is to be received in evidence and, unless the contrary is provided, taken to be so signed or executed.

SCHEDULE 6

Section 36(3)

CSCI: SUPPLEMENTARY

Status

- 1 (1) The CSCI's property is not to be regarded as property of, or property held on behalf of, the Crown. 5
- (2) The CSCI is not to be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown.

General powers and duties

- 2 (1) The CSCI may do anything which appears to it to be necessary or expedient for the purpose of, or in connection with, the exercise of its functions. 10
- (2) That includes, in particular –
- (a) co-operating with other public authorities in the United Kingdom,
 - (b) acquiring and disposing of land and other property,
 - (c) entering into contracts, and
 - (d) providing training. 15
- (3) It is the duty of the CSCI to carry out its functions effectively, efficiently and economically.

Chairman and other members

- 3 (1) The CSCI is to consist of a chairman and other members appointed by the Secretary of State. 20
- (2) The Secretary of State may in the prescribed manner remove the chairman or any other member from office if (and only if) the Secretary of State is satisfied that that person –
- (a) is unable or unfit to carry out the duties of his office,
 - (b) is failing to carry out the duties of his office, or 25
 - (c) has become disqualified from holding office.
- (3) The Secretary of State may by regulations make provision as to –
- (a) the appointment of the chairman and other members (including the number, or limits on the number, of members who may be appointed and any conditions to be fulfilled for appointment), and 30
 - (b) subject to this paragraph, the tenure of office of the chairman and other members (including the circumstances in which they cease to hold office, become disqualified from holding office or may be suspended from office).
- (4) Regulations under sub-paragraph (3)(b) relating to the suspension of a person from office may only provide for suspension where it appears to the Secretary of State that one of the conditions referred to in sub-paragraph (2) is or may be satisfied in relation to that person. 35

Remuneration of chairman and other members

- 4 (1) The CSCI may pay to its chairman, or to any other member, such remuneration and allowances as the Secretary of State may determine. 40

- (2) If the Secretary of State so determines, the CSCI must pay or make provision for the payment of such pension, allowance or gratuities as the Secretary of State may determine to or in respect of a person who is or has been the chairman or other member of the CSCI.
- (3) If the Secretary of State determines that there are special circumstances that make it right for a person ceasing to hold office as chairman of the CSCI to receive compensation, the CSCI must pay to him, or make provision for the payment to him of, such compensation as the Secretary of State may determine. 5

Employees 10

- 5 (1) The CSCI must appoint a chief executive (to be known as the “Chief Inspector of Social Care”), who is to be an employee of the CSCI and is to be responsible to it for the general exercise of its functions.
- (2) The CSCI must also appoint a Children’s Rights Director who is to be an employee of the CSCI and is to have such functions as may be prescribed. 15
- (3) The CSCI may appoint such other employees as it considers appropriate.
- (4) Employees of the CSCI are to be appointed on such terms and conditions as it may determine.
- (5) Without prejudice to its other powers, the CSCI may pay, or make provision for the payment of – 20
 - (a) pensions, allowances or gratuities, or
 - (b) compensation for loss of employment or reduction of remuneration, to or in respect of its employees.

Procedure

- 6 (1) The CSCI may – 25
 - (a) appoint such committees and sub-committees (which may consist of or include persons who are not members of the CSCI) as it thinks fit;
 - (b) pay such remuneration and allowances to members of its committees and sub-committee as it thinks fit.
- (2) The CSCI may in all other respects regulate its own procedure. 30
- (3) The validity of the proceedings of the CSCI is not affected by any defect in the appointment of a member or any vacancy in membership.

Discharge of functions

- 7 (1) The CSCI may arrange for – 35
 - (a) any of its committees, sub-committees, members or employees, or
 - (b) any other person,to exercise any of its functions on its behalf.
- (2) If the CSCI arranges for the discharge of any function as mentioned in subparagraph (1)(b), the arrangements may include provision with respect to the payment of remuneration and allowances to, or amounts in respect of, such persons. 40

Assistance

- 8 (1) The CSCI may arrange for such persons as it thinks fit to assist it in the discharge of any of its functions in relation to a particular case or class of case.
- (2) Such arrangements may include provision with respect to the payment of remuneration and allowances to, or amounts in respect of, such persons. 5

Payments and loans

- 9 (1) *The Secretary of State may make payments out of money provided by Parliament to the CSCI of such amounts, at such times and on such conditions (if any) as he considers appropriate.* 10
- (2) *The Secretary of State may, with the approval of the Treasury, make loans out of money provided by Parliament to the CSCI on such terms (including terms as to repayment and interest) as he may determine.*
- (3) *Except as provided by sub-paragraph (2), the CSCI has no power to borrow money.*

Accounts

- 10 (1) The CSCI must keep its accounts in such form as the Secretary of State may determine.
- (2) The CSCI must prepare annual accounts in respect of each financial year in such form as the Secretary of State may determine.
- (3) The CSCI must send copies of the annual accounts to the Secretary of State and the Comptroller and Auditor General within such period after the end of the financial year to which the accounts relate as the Secretary of State may determine. 20
- (4) The Comptroller and Auditor General must examine, certify and report on the annual accounts and must lay copies of the accounts and of his report before Parliament. 25

Seal and evidence

- 11 The application of the seal of the CSCI must be authenticated by the signature—
- (a) of any member of the CSCI, or 30
- (b) of any other person who has been authorised by the CSCI (whether generally or specifically) for that purpose.
- 12 A document purporting to be duly executed under the seal of the CSCI or to be signed on its behalf is to be received in evidence and, unless the contrary is provided, taken to be so signed or executed. 35

SCHEDULE 7

Section 36(4)

CHAI AND CSCI: TRANSFERS OF PROPERTY AND STAFF, ETC

Transfer schemes

- 1 (1) The Secretary of State may make one or more schemes for –
 - (a) the transfer of property, rights and liabilities of the National Care Standards Commission to the CHAI or the CSCI; 5
 - (b) the transfer of property, rights and liabilities of the Audit Commission to the CHAI or the CSCI;
 - (c) the transfer of property, rights and liabilities of the Commission for Health Improvement to the CHAI; 10
 - (d) the transfer of property, rights and liabilities of the Crown to the CSCI.
- (2) The property, rights and liabilities which may be the subject of a scheme include –
 - (a) any that would otherwise be incapable of being transferred or assigned, and 15
 - (b) rights and liabilities under a contract of employment.
- (3) A scheme under sub-paragraph (1) may define the property, rights and liabilities to be transferred by specifying or describing them (including describing them by reference to a specified part of the transferor's undertaking). 20
- (4) A scheme under this paragraph may include supplementary, incidental, transitional and consequential provision.

Transfer

- 2 The property, rights and liabilities which are the subject of a scheme under paragraph 1 are, by virtue of this paragraph, transferred on the day appointed by the scheme in accordance with the provisions of the scheme. 25

Employment

- 3 The transfer by paragraph 2 of the rights and liabilities relating to an individual's contract of employment does not break the continuity of his employment, and, accordingly –
 - (a) he is not to be regarded for the purposes of Part 11 of the Employment Rights Act 1996 (c. 18) as having been dismissed by virtue of the transfer, and
 - (b) his period of employment with the transferor counts as a period of employment with the transferee for the purposes of that Act. 35
- 4 (1) Paragraph 2 does not operate to transfer the rights and liabilities under an individual's contract of employment if, before the transfer takes effect, he informs the transferor or transferee that he objects to the transfer.
- (2) Where an individual does notify the transferor or transferee as specified in sub-paragraph 2, his contract of employment with the transferor is terminated immediately before the date on which the transfer would occur; but he shall not, for any purpose, be regarded as having been dismissed by the transferor. 40

	(3) This paragraph is without prejudice to any right of an individual employed by a transferor to terminate his contract of employment if (apart from the change of employer) a substantial change is made to his detriment in his working conditions.	
5	For the purposes of this Schedule, where a person holds any office or employment under the Crown on terms which do not constitute a contract of employment between that person and the Crown—	5
	(a) he shall be regarded as employed by the Crown by virtue of a contract of employment;	
	(b) the terms of his employment shall be regarded as constituting the terms of that contract; and	10
	(c) in relation to such a person, the reference in paragraph 4(2) to dismissal by the transferor is to termination of his employment by the Crown.	
	<i>Transitional</i>	15
6	(1) Anything done by or in relation to the transferor for the purposes of or in connection with anything transferred by paragraph 2 which is in effect immediately before it is transferred shall be treated as if done by or in relation to the transferee.	
	(2) There may be continued by or in relation to the transferee anything (including legal proceedings) relating to anything so transferred which is in the process of being done by or in relation to the transferor immediately before it is transferred.	20
	(3) A reference to the transferor in any document relating to anything so transferred shall be taken (so far as necessary for the purposes of or in consequence of the transfer) as a reference to the transferee.	25
	(4) A transfer under paragraph 2 does not affect the validity of anything done by or in relation to the transferor before the transfer takes effect.	

SCHEDULE 8

Section 134

PART 2: MINOR AND CONSEQUENTIAL AMENDMENTS 30

Public Records Act 1958 (c.52)

1	In Schedule 1 to the Public Records Act 1958 (definition of public records), at the appropriate places in Part 2 of the Table at the end of paragraph 3 insert the following entries—	
	“Commission for Healthcare Audit and Inspection”;	35
	“Commission for Social Care Inspection”.	

Public Bodies (Admission to Meetings Act 1960 (c.67)

2	In the Schedule to the Public Bodies (Admission to Meetings) Act 1960 (bodies to which the Act applies), after paragraph (bf) of paragraph 1 insert—	40
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- “(bg) the Commission for Healthcare Audit and Inspection;
- (bh) the Commission for Social Care Inspection;”.

Parliamentary Commissioner Act 1967 (c.13)

- 3 In the Parliamentary Commissioner Act 1967, in Schedule 2 (departments subject to investigation), at the appropriate places insert the following entries – 5
- “Commission for Healthcare Audit and Inspection.”;
 - “Commission for Social Care Inspection.”

Local Authority Social Services Act 1970 (c. 42)

- 4 In the Local Authority Social Services Act 1970, in Schedule 1, insert at the end – 10
- | | | |
|---|-------------------------------|----|
| “Health and Social Care
(Community Health and
Standards) Act 2003

Sections 111 and 112 | Consideration of complaints.” | 15 |
|---|-------------------------------|----|

House of Commons Disqualification Act 1975 (c.24)

- 5 In the House of Commons Disqualification Act 1975, in Part 2 of Schedule 1 (bodies of which all members are disqualified), at the appropriate places insert the following entries –
- “Commission for Healthcare Audit and Inspection.”; 20
 - “Commission for Social Care Inspection.”.

Northern Ireland Assembly Disqualification Act (c.25)

- 6 In the Northern Ireland Assembly Disqualification Act 1975, in Part 2 of Schedule 1 (bodies of which all members are disqualified), at the appropriate places insert the following entries – 25
- “Commission for Healthcare Audit and Inspection.”;
 - “Commission for Social Care Inspection.”.

National Health Service Act 1977 (c.49)

- 7 In section 19A(2) of the National Health Service Act 1977, after paragraph (a) insert – 30
- “(aa) a complaint under section 109 or 110 of the Health and Social Care (Community Health and Standards) Act 2003,”.

Children Act 1989 (c.41)

- 8 (1) The Children Act 1989 has effect subject to the following amendments.

- (2) In section 65(6)(a), for “the National Care Standards Commission” substitute “the Commission for Social Care Inspection”.
- (3) In section 87(10) –
- (a) in the definition of “appropriate authority”, in paragraph (a), for “the National Care Standards Commission” substitute “the Commission for Social Care Inspection”, and 5
 - (b) in the definition of “the Commission”, for “the National Care Standards Commission” substitute “the Commission for Social Care Inspection”.
- (4) In paragraph 20 of Schedule 2, at the end of paragraph (a) insert “and the Commission for Social Care Inspection”. 10

Health Service Commissioners Act 1993 (c.46)

- 9 (1) The Health Service Commissioners Act 1993 has effect subject to the following amendments.
- (2) In section 4(4)(a), after “can be made” insert “under section 109 or 110 of the Health and Social Care (Community Health and Standards) Act 2003 or”. 15
- (3) In section 11, after subsection (1B) insert –
- “(1C) Where a Commissioner proposes to conduct an investigation pursuant to a complaint under section 3(1E), he shall afford to the person or body whose maladministration is complained of an opportunity to comment on any allegations contained in the complaint.” 20
- (4) In section 12(1A), for “or (1C)” substitute “(1C) or (1E)”.
- (5) In section 14, after subsection (2D) insert –
- “(2E) In any case where the Health Service Commissioner for England conducts an investigation pursuant to a complaint under section 3(1E) he shall send a report of the results of the investigation – 25
- (a) to the person who made the complaint;
 - (b) to any member of the House of Commons who to the Commissioner’s knowledge assisted in the making of the complaint (or if he is no longer a member to such other member as the Commissioner thinks appropriate); 30
 - (c) to the person or body whose maladministration is complained of;
 - (d) to any person or body whose action was complained of in the complaint made to the person or body whose maladministration is complained of; 35
 - (e) to the Secretary of State.
- (2F) In any case where the Health Service Commissioner for England decides not to conduct an investigation pursuant to a complaint under section 3(1E) he shall send a statement of his reasons – 40
- (a) to the person who made the complaint; or
 - (b) to any such member of the House of Commons as is mentioned in subsection (2E)(b).”
- (6) In section 14A, at the end insert – 45

- “(4) In any case where the Health Service Commissioner for Wales conducts an investigation pursuant to a complaint under section 3(1E) he shall send a report of the results of the investigation –
- (a) to the person who made the complaint;
 - (b) to any Assembly member who to the Commissioner’s knowledge assisted in the making of the complaint (or if he is no longer an Assembly member to such other member as the Commissioner thinks appropriate);
 - (c) to the person or body whose maladministration is complained of;
 - (d) to any person or body whose action was complained of in the complaint made to the person or body whose maladministration is complained of;
 - (e) to the Assembly First Secretary.
- (5) In any case where the Health Service Commissioner for Wales decides not to conduct an investigation pursuant to a complaint under section 3(1E) he shall send a statement of his reasons –
- (a) to the person who made the complaint; or
 - (b) to any such member of the Assembly as is mentioned in subsection (4)(b).”
- (7) In section 14B –
- (a) for “14A(1)”, in each place, substitute “14A”, and
 - (b) in subsection (2), for “or (1C)” substitute “(1C) or (1E)”.

Audit Commission Act 1998 (c.18)

- 10 (1) The Audit Commission Act 1998 has effect subject to the following amendments. 25
- (2) In section 4, in subsection (7) –
- (a) in paragraph (a), after “bodies,” insert “the Commission for Healthcare Audit and Inspection and”; and
 - (b) in paragraph (b), after “bodies,” insert “the Commission for Social Care Inspection and”; and
 - (c) in paragraph (c), after “case,” insert “the National Assembly for Wales and”.
- (3) At the end of that section insert –
- “(8) The Commission must obtain the agreement of the Commission for Healthcare Audit and Inspection before preparing or altering provisions of a code which –
- (a) are applicable to accounts which are or include accounts of health service bodies; and
 - (b) concern the function under section 5(1)(e).”
- (4) In section 7 –
- (a) in subsection (2)(a), for “such organisations” substitute “the Commission for Healthcare Audit and Inspection and such other organisations”; and
 - (b) in subsection (9), after paragraph (a) insert –

- “(aa) the Commission for Healthcare Audit and Inspection;”.
- (5) In section 33 (studies for improving economy etc in services), in subsection (6), at the end insert –
- “(d) in the case of a study which has a connection with English local authority social services (within the meaning of Part 2 of the Health and Social Care (Community Health and Standards) Act 2003), also consult the Commission for Social Care Inspection; and 5
- (e) in the case of a study which has a connection with Welsh local authority social services (within the meaning of that Part of that Act), also consult the National Assembly for Wales;” 10
- (6) In that section, after subsection (6) insert –
- “(7) The following provisions of this section do not apply in relation to the bodies specified in subsection (8) – 15
- (a) subsection (1)(a);
- (b) subsection (1)(b), so far as relating to management other than financial management.
- (8) Those bodies are –
- (a) any Primary Care Trust; 20
- (b) any Strategic Health Authority;
- (c) any NHS foundation trust;
- (d) any NHS trust (within the meaning of the National Health Service Act 1977) all or most of whose hospitals, establishments and facilities are situated in England.” 25
- (7) In section 34(6), after paragraph (b) insert –
- “(ba) in the case of a study which has a connection with any English local authority social service (within the meaning of Part 2 of the Health and Social Care (Community Health and Standards) Act 2003), the Commission for Social Care Inspection; 30
- (bb) in the case of a study which has a connection with any Welsh local authority social service (within the meaning of that Part of that Act), the National Assembly for Wales;”.
- (8) In section 35 (studies at request of bodies subject to audit), at the end insert – 35
- “(4) This section does not apply in relation to the bodies specified in section 33(8).”
- (9) For section 37 substitute –
- “37 Assistance to CHAI and CSCI**
- (1) The Audit Commission may provide assistance to the Commission for Healthcare Audit and Inspection or the Commission for Social Care Inspection in the discharge of any of their functions under Chapter 3 or 5 of Part 2 of the Health and Social Care (Community Health and Standards) Act 2003. 40

- (2) Assistance under subsection (1) may be provided on such terms, including terms as to payment, as the Audit Commission and the Commission in question may agree.”
- (10) In section 49(1) –
- (a) after paragraph (b) insert – 5
 - “(ba) to the Commission for Social Care Inspection for the purposes of its functions under Chapter 5 of Part 2 of the Health and Social Care (Community Health and Standards) Act 2003;
 - (bb) to the National Assembly for Wales for the purposes of its functions under Chapter 4 of that Part of that Act;”, 10
 - (b) in paragraph (c), at the end insert “or for the purposes of the functions of the Commission for Healthcare Audit and Inspection under Chapter 3 of Part 2 of the Health and Social Care (Community Health and Standards) Act 2003”. 15
- Government of Wales Act 1998 (c.38)*
- 11 In Schedule 5 to the Government of Wales Act 1998, for paragraph 12A substitute –
- “12A. The Commission for Healthcare Audit and Inspection.” 20
- Protection of Children Act 1999 (c.14)*
- 12 In section 2A of the Protection of Children Act 1999, in subsection (2), for paragraph (a) substitute –
- “(a) the Commission for Social Care Inspection;
 - (aa) the Commission for Healthcare Audit and Inspection;”. 25
- Local Government Act 1999 (c.27)*
- 13 In section 25(2) of the Local Government Act 1999, for paragraphs (e) to (g) substitute –
- “(e) the Commission for Social Care Inspection;”.
- Care Standards Act 2000 (c.14)* 30
- 14 The Care Standards Act 2000 has effect subject to the following amendments.
- 15 In section 5, in paragraph (a), for “the National Care Standards Commission” substitute –
- “(i) the CHAI, in the case of independent hospitals, independent clinics and independent medical agencies; 35
 - (ii) the CSCI, in the case of children’s homes, care homes, residential family centres, domiciliary care agencies, nurses agencies, fostering agencies, voluntary adoption agencies and adoption support agencies;”. 40
- 16 (1) Section 8 is amended as follows.

- (2) In subsection (3), for the words from “section 7” to “Commission” substitute “section 5A or 5B is exercisable by the CHAI or the CSCI”.
- (3) At the end insert –
- “(6) In this section, “Part II services” means services of the kind provided by persons registered under Part II, other than the provision of – 5
- (a) medical or psychiatric treatment, or
- (b) listed services (as defined in section 2).”
- 17 In section 10 –
- (a) subsection (1) is omitted; and
- (b) in subsection (6)(b), for “by the Commission” substitute “by the CHAI or the CSCI under this Act”. 10
- 18 In section 11(4), for “the Commission” substitute “the CHAI or the CSCI”.
- 19 In section 23(4)(d), after “or” insert “against a voluntary adoption agency or adoption support agency for an offence under”.
- 20 In section 29(1) – 15
- (a) for “the Commission”, in the first place, substitute “the CHAI or the CSCI (as appropriate)”, and
- (b) for “the Commission”, in the second place, substitute “either the CHAI or the CSCI”.
- 21 In section 31 – 20
- (a) in subsection (6), for “powers” substitute “power”; and
- (b) in subsection (7), for “the Commission” substitute “the CHAI or the CSCI”.
- 22 In section 36A for “the Commission”, in all places, substitute “the CSCI”.
- 23 In section 42, at the end insert – 25
- “(5) Regulations under subsection (1) made by the Secretary of State may in particular specify whether, for the purposes of the application of this Part to any person, the registration authority is to be the CHAI or the CSCI.”
- 24 In section 45(4) – 30
- (a) omit “Subject to section 47(6)”;
- (b) for “the Commission” substitute “the CSCI”; and
- (c) at the end insert “; and an inspection under this section shall be regarded for all purposes as undertaken under section 76 of the Health and Social Care (Community Health and Standards) Act 2003”. 35
- 25 In section 113(1) –
- (a) for “the Commission” substitute “the CHAI or the CSCI”; and
- (b) in paragraph (a), at the end insert “under this Act”; and
- (c) in paragraph (b), for “its” substitute “those”. 40
- 26 In section 121, in the Table in subsection (13), insert the following entries at the appropriate places –

“CHAI | Section 5A”; and

“CSCI | Section 5B”.

Freedom of Information Act 2000 (c.36)

27 In the Freedom of Information Act 2000, in Part 6 of Schedule 1, at the appropriate places insert the following entries— 5

“Commission for Healthcare Audit and Inspection, in respect of information held for purposes other than those of its functions exercisable by virtue of paragraph 5(a)(i) of the Care Standards Act 2000.”;

“Commission for Social Care Inspection, in respect of information held for purposes other than those of its functions exercisable by virtue of paragraph 5(a)(ii) of the Care Standards Act 2000.”. 10

Adoption and Children Act 2002 (c.38)

28 In section 99 of the Adoption and Children Act 2002, for “the National Care Standards Commission” substitute “the Commission for Social Care Inspection”. 15

SCHEDULE 9

Section 137

RECOVERY OF NHS CHARGES: EXEMPTED PAYMENTS

1 Any payment made to or for the injured person under— 20
(a) section 130 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) (compensation orders against convicted persons), or
(b) section 249 of the Criminal Procedure (Scotland) Act 1995 (c. 46) (corresponding provision in relation to Scotland).

2 Any payment made in the exercise of a discretion out of property held subject to a trust in a case where no more than 50 per cent by value of the capital contributed to the trust was directly or indirectly provided by persons who are, or are alleged to be, liable in respect of— 25
(a) the injury suffered by the injured person, or
(b) any connected injury suffered by another.

3 Any payment made out of property held for the purposes of a prescribed trust. 30

4 (1) Any payment made to the injured person by an insurer under the terms of any contract of insurance entered into between the injured person and the insurer before the occurrence of the injury in question. 35

(2) In sub-paragraph (1), “insurer” means—

- (a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 (c. 8) to effect or carry out contracts of insurance, or
- (b) an EEA firm of the kind mentioned in paragraph 5(d) of Schedule 3 to that Act which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to effect or carry out contracts of insurance. 5
- (3) Sub-paragraph (2) must be read with—
- (a) section 22 of the Financial Services and Markets Act 2000,
- (b) any relevant order under that section, and 10
- (c) Schedule 2 to that Act.
- 5 Any payment which apart from this paragraph would be made by—
- (a) the responsible body of the health service hospital to whom the payment would subsequently be passed under section 149,
- (b) the relevant ambulance trust to whom the payment would subsequently be passed under that section. 15
- 6 Any payment to the extent that it is made—
- (a) in consequence of an action under the Fatal Accidents Act 1976 (c. 30), or
- (b) in circumstances where, had an action been brought, it would have been brought under that Act. 20
- 7 Any payment to the extent that it is made in respect of a liability arising by virtue of section 1 of the Damages (Scotland) Act 1976 (c. 13).
- 8 Any payment of a prescribed description, either generally or in such circumstances as may be prescribed. 25

SCHEDULE 10

Section 166

PART 4: MINOR AND CONSEQUENTIAL AMENDMENTS

National Health Service Act 1977 (c.49)

- 1 The National Health Service Act 1977 has effect subject to the following amendments. 30
- 2 In section 77, at the end insert—
- “(4) This section does not apply in relation to the provision of any relevant dental service (within the meaning of section 79 below).”
- 3 In section 78(3), for “paragraphs 2 and 5” substitute “paragraph 2”.
- 4 In section 83(a), for “to 79” substitute “and 78”. 35
- 5 In section 83A(1)(a), for the words from “section 77(1)” to “1997” substitute “section 77(1), 78(1) or 79 above”.
- 6 In section 85(1)—
- (a) insert “or” at the end of paragraph (bbb), and

- (b) omit paragraph (e).
- 7 (1) Section 98 is amended as follows.
- (2) In subsection (1) –
- (a) insert “and” at the end of paragraph (dd), and
- (b) omit paragraph (e) and the preceding “and”. 5
- (3) In subsection (4) –
- (a) in paragraph (a), omit the words from “, other than” to the end, and
- (b) omit paragraph (b).
- 8 In section 99(1) –
- (a) insert “and” at the end of paragraph (bb), and 10
- (b) omit paragraph (f) and the preceding “and”.
- 9 In section 100(1) –
- (a) insert “and” at the end of paragraph (b), and
- (b) omit paragraph (e) and the preceding “and”.
- 10 In section 128(1), in the definition of “dental corporation”, for the words after “corporation” substitute “means a body corporate which carries on the business of dentistry (within the meaning of section 40 of the Dentists Act 1984;”. 15

Health and Medicines Act 1988 (c. 49)

- 11 In section 12(1) of the Health and Medicines Act 1988 – 20
- (a) omit “The Dental Estimates Board shall be renamed as “the Dental Practice Board” and”,
- (b) in paragraph (a), omit “for any reference to the Dental Estimates Board there were substituted a reference to the Dental Practice Board and”, and 25
- (c) in paragraph (b) –
- (i) omit “the Dental Estimates Board or”,
- (ii) for “either or both of those Boards” substitute “that Board”, and
- (iii) omit “the Dental Practice Board and”. 30

Health Service Commissioners Act 1993 (c. 46)

- 12 The Health Service Commissioners Act 1993 has effect subject to the following amendments.
- 13 In section 2 –
- (a) in subsection (1)(c), at the end insert “, or in respect of England and Wales equally,”; and 35
- (b) in subsection (2)(b), at the end insert “, or in respect of England and Wales equally,”.
- 14 In section 18(1), after “partly” insert “or wholly”.

Education Act 1996 (c. 56)

- 15 In section 520(1) of the Education Act 1996, for “(1A)” substitute “16CB”. 40

SCHEDULE 11

Section 168

PRIVY COUNCIL APPOINTMENTS

Pharmacy Act 1954 (2 & 3 Eliz 2 c. 61)

- 1 (1) The Pharmacy Act 1954 is amended as follows.
- (2) In section 15 (appointment of certain members to the Council of the Pharmaceutical Society of Great Britain) after subsection (2) there are inserted the following subsections—
- “ (3) Subsection (4) applies if, under section 168 of the Health and Social Care (Community Health and Standards) Act 2003, the Secretary of State has given a direction to a Special Health Authority to exercise any function of a Minister of the Crown relating to the making of appointments to a body mentioned in that section. 10
- (4) The Privy Council may direct the Special Health Authority to exercise its functions under this section in relation to—
- (a) the appointment of members to the Council; 15
- (b) the period for which a person appointed is to hold office.”
- (3) In Schedule 1 (the Statutory Committee) after paragraph 3 there is inserted the following paragraph—
- “3A (1) This paragraph applies if, under section 168 of the Health and Social Care (Community Health and Standards) Act 2003, the Secretary of State has given a direction to a Special Health Authority to exercise any function of a Minister of the Crown relating to the making of appointments to a body mentioned in that section. 20
- (2) The Privy Council may direct the Special Health Authority to exercise its functions under paragraph 1 in relation to the appointment and removal of the chairman of the committee. 25
- (3) If the Privy Council give a direction as mentioned in subparagraph (2) for so long as the direction remains in force paragraph 3(2)(b) must be construed as if the reference to the Clerk to the Privy Council is a reference to the Special Health Authority.” 30

Medical Act 1983 (c. 54)

- 2 (1) Schedule 1 to the Medical Act 1983 (the General Medical Council) is amended as follows. 35
- (2) In paragraph 4(1) (nominated members) for the words “Her Majesty on the advice of Her Privy Council” there are substituted “the Privy Council”.
- (3) After paragraph 4 there is inserted—
- “4ZA(1) This paragraph applies if, under section 168 of the Health and Social Care (Community Health and Standards) Act 2003, the Secretary of State has given a direction to a Special Health Authority to exercise any function of a Minister of the Crown relating to the making of appointments to a body mentioned in that section. 40

- (2) The Privy Council may direct the Special Health Authority to exercise its functions under paragraph 4 in relation to the nomination of persons to be nominated members of the Council.”

Dentists Act 1984 (c. 24)

- 3 (1) Schedule 1 to the Dentists Act 1984 (the General Dental Council) is amended as follows. 5
- (2) In paragraph 1 (constitution) in sub-paragraph (5) for “paragraph 2” there is substituted “paragraphs 2 and 2A”.
- (3) In paragraph 2 (lay members) for sub-paragraphs (2) and (3) there are substituted the following – 10
- “(2) The lay members shall be appointed by the Privy Council.
- (3) The lay members must include at least one person from each of England, Scotland, Wales and Northern Ireland.
- (4) A person is from England, Scotland, Wales or Northern Ireland (as the case may be) if he lives or works there or mainly lives or works there.” 15
- (4) After paragraph 2 there is inserted the following paragraph –
- “2A (1) This paragraph applies if, under section 168 of the Health and Social Care (Community Health and Standards) Act 2003, the Secretary of State has given a direction to a Special Health Authority to exercise any function of a Minister of the Crown relating to the making of appointments to a body mentioned in that section. 20
- (2) The Privy Council may direct the Special Health Authority to exercise its functions under paragraph 2 in relation to – 25
- (a) the appointment of persons to be lay members of the Council;
- (b) the termination of such an appointment.”

Opticians Act 1989 (c. 44)

- 4 In Schedule 1 to the Opticians Act 1989 (the General Optical Council) after paragraph 2 there is inserted the following paragraph – 30
- “2A (1) This paragraph applies if, under section 168 of the Health and Social Care (Community Health and Standards) Act 2003, the Secretary of State has given a direction to a Special Health Authority to exercise any function of a Minister of the Crown relating to the making of appointments to a body mentioned in that section. 35
- (2) The Privy Council may direct the Special Health Authority to exercise its functions under paragraphs 1 and 2 in relation to the nomination of persons to be members of the Council.” 40

Osteopaths Act 1993 (c. 21)

- 5 In the Schedule to the Osteopaths Act 1993 after paragraph 11 (members of the General Council appointed by the Privy Council) there is inserted the following paragraph –

	“11A(1) This paragraph applies if, under section 168 of the Health and Social Care (Community Health and Standards) Act 2003, the Secretary of State has given a direction to a Special Health Authority to exercise any function of a Minister of the Crown relating to the making of appointments to a body mentioned in that section.	5
	(2) The Privy Council may direct the Special Health Authority to exercise its functions under paragraphs 1 and 11 in relation to the appointment of members of the Council.”	
	<i>Chiropractors Act 1994 (c. 17)</i>	10
6	In Schedule 1 to the Chiropractors Act 1994 after paragraph 11 (members of the General Council appointed by the Privy Council) there is inserted the following paragraph—	
	“11A(1) This paragraph applies if, under section 168 of the Health and Social Care (Community Health and Standards) Act 2003, the Secretary of State has given a direction to a Special Health Authority to exercise any function of a Minister of the Crown relating to the making of appointments to a body mentioned in that section.	15
	(2) The Privy Council may direct the Special Health Authority to exercise its functions under paragraphs 1 and 11 in relation to the appointment of members of the Council.”	20
	<i>The Nursing and Midwifery Order 2001 (S.I. 2002/253)</i>	
7	In Schedule 1 to the Nursing and Midwifery Order 2001 (the Nursing and Midwifery Council) after paragraph 15 (powers of the Council) there is inserted the following paragraph—	25
	<i>“Privy Council functions</i>	
	15A (1) This paragraph applies if, under section 168 of the Health and Social Care (Community Health and Standards) Act 2003, the Secretary of State has given a direction to a Special Health Authority to exercise any function of a Minister of the Crown relating to the making of appointments to a body mentioned in that section.	30
	(2) The Privy Council may direct the Special Health Authority to exercise its functions under this Part of this Schedule in relation to the appointment, replacement and removal of members of the Council.”	35
	<i>The Health Professions Order 2001 (S.I. 2002/254)</i>	
8	In Schedule 1 to the Health Professions Order 2001 (the Health Professions Council) after paragraph 16 (powers of the Council) there is inserted the following paragraph—	40

“Privy Council functions

- 16A (1) This paragraph applies if, under section 168 of the Health and Social Care (Community Health and Standards) Act 2003, the Secretary of State has given a direction to a Special Health Authority to exercise any function of a Minister of the Crown relating to the making of appointments to a body mentioned in that section. 5
- (2) The Privy Council may direct the Special Health Authority to exercise its functions under this Part of this Schedule in relation to the appointment, replacement and removal of members of the Council.” 10

SCHEDULE 12

Section 175

REPEALS AND REVOCATIONS

PART 1

NHS FOUNDATION TRUSTS

15

<i>Reference</i>	<i>Extent of repeal or revocation</i>	
Health Services and Public Health Act 1968 (c. 46)	In section 63(5B), the “and” at the end of paragraph (bbb).	
National Health Service Act 1977 (c. 49)	In section 22(1A), the “or” at the end of paragraph (cc). In section 125, the “and” at the end of paragraph (bbb).	20
National Health Service and Community Care Act 1990 (c. 19)	In Schedule 2, paragraphs 21 and 25(b). In Schedule 9— paragraph 7(a), paragraph 13(a), in paragraph 18(5)(a), the words from “after” to “trust” and”, paragraph 36(4)(a).	25
Access to Health Records Act 1990 (c. 23)	In section 11, in the definition of “health service body”, the “or” before paragraph (d).	30
Courts and Legal Services Act 1990 (c. 41)	In Schedule 16— in paragraph 14(b), the words from “and after” to the end, paragraph 20.	35
Health and Social Care Act 2001 (c. 15)	In section 11(2), the “and” before paragraph (c).	

PART 2

QUALITY AND STANDARDS

<i>Reference</i>	<i>Extent of repeal or revocation</i>	
Public Records Act 1958 (c.51)	In Schedule 1, in Part 2 of the Table at the end of paragraph 3, the entries relating to the Commission for Health Improvement and the National Care Standards Commission.	5
Public Bodies (Admission to Meetings) Act 1960 (c.67)	In the Schedule, paragraph 1(bc) and (bf).	
Parliamentary Commissioner Act 1967 (c.13)	In Schedule 2, the entries relating to the Commission for Health Improvement and the National Care Standards Commission.	10
Local Authority Social Services Act 1970 (c.42)	Section 7B.	
House of Commons Disqualification Act 1975 (c.24)	In Part 2 of Schedule 1, the entries relating to the Commission for Health Improvement and the National Care Standards Commission.	15
Northern Ireland Assembly Disqualification Act 1975 (c.25)	In Part 2 of Schedule 1, the entries relating to the Commission for Health Improvement and the National Care Standards Commission.	20
Hospital Complaints Procedure Act 1985 (c. 42)	The whole Act.	
Health Service Commissioners Act 1993 (c. 46)	Section 4(6).	
Health Authorities Act 1995 (c. 17)	In Schedule 1, paragraph 109.	25
Health Act 1999 (c. 8)	Sections 18 to 24. In section 62 – in subsection (1), “20 or” and “or Schedule 2,”; in subsection (5), “20 or”.	30
	In section 64, the definition of “the Commission”.	
	Schedule 2.	
	In Schedule 4, paragraph 71.	
Care Standards Act 2000 (c.14)	Sections 6 and 7. Section 9. Section 10(1). Section 22(8)(a). In section 31(6), the words “and inspect any medical records relating to his treatment in the establishment”.	35
	Section 32(8).	
	Section 44.	
	Section 45(1) to (3) and (5).	
	Sections 46 and 47.	40
	Section 49(2).	
	Section 51.	
	In section 121(13), in the table, the entry for “the Commission”.	45

<i>Reference</i>	<i>Extent of repeal or revocation</i>	
Care Standards Act 2000 (c.14) – <i>cont.</i>	In Schedule 1 – in paragraph 1(1), “the Commission,”; paragraphs 9 to 11, 15 and 17.	
Local Government Act 2000 (c.22)	In Schedule 5, paragraph 29.	5
Freedom of Information Act 2000 (c.36)	In Part VI of Schedule 1, the reference to the Commission for Health Improvement.	
National Health Service Reform and Health Care Professions Act 2002 (c.17)	Sections 11 to 14. In Schedule 1, paragraphs 49 and 50. In Schedule 5, paragraph 44. In Schedule 8, paragraphs 28 to 31.	10

PART 3

RECOVERY OF NHS CHARGES

<i>Reference</i>	<i>Extent of repeal or revocation</i>	<i>15</i>
Road Traffic (NHS Charges) Act 1999 (c. 3)	The whole Act.	
Road Traffic Act 1988 (c. 52)	In section 145(6) – (a) the words “or the Road Traffic (NHS Charges) Act 1999”, and (b) in paragraph (b), the words “or section 1 of the Act of 1999”. In section 161(1), in the definition of “hospital”, paragraph (b).	20
Tribunals and Inquiries Act 1992 (c. 53)	In Part 2 of Schedule 1, paragraph 56(e).	25
Community Care and Health (Scotland) Act 2002 (asp 5)	Section 20(3).	

PART 4

DENTAL SERVICES

<i>Reference</i>	<i>Extent of repeal or revocation</i>	<i>30</i>
Parliamentary Commissioner Act 1967 (c. 13)	In Schedule 3, in paragraph 8(1), “the Dental Practice Board or”.	
House of Commons Disqualification Act 1975 (c. 24)	In Schedule 1, in Part 3, the entry relating to the Chairman or Vice-Chairman of the Dental Practice Board or member of that Board appointed at an annual salary.	35
Race Relations Act 1976 (c. 74)	In Schedule 1A, in Part 2, the entry relating to the Dental Practice Board.	
National Health Service Act 1977 (c. 49)	Section 5(1A). Section 28E(3)(j) and (8). Sections 35 to 37.	40

<i>Reference</i>	<i>Extent of repeal or revocation</i>	
Employment Rights Act 1996 (c. 18)	Section 218(10)(d).	
National Health Service (Primary Care) Act 1997 (c. 46)	Section 17. Section 20. In Schedule 2, paragraphs 16 to 19.	5
Health Act 1999 (c. 8)	Section 39(2) and (3).	
National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672)	In Schedule 1, in the entry for the National Health Service Act 1977, paragraphs (c) and (e).	10
Freedom of Information Act 2000 (c. 36)	In Schedule 1, in Part 3, paragraph 42.	
Health and Social Care Act 2001 (c. 15)	Section 22(4).	
National Health Service Reform and Health Care Professions Act 2002 (c. 17)	In Schedule 1, paragraph 17.	15

PART 5

REPLACEMENT OF WELFARE FOOD SCHEMES

<i>Reference</i>	<i>Extent of repeal or revocation</i>	<i>20</i>
Social Security Act 1998 (c.7)	Section 15A(3).	

PART 6

LOANS BY SECRETARY OF STATE TO NHS TRUSTS

<i>Reference</i>	<i>Extent of repeal or revocation</i>	
National Health Service and Community Care Act 1990 (c.19)	In Schedule 3, in paragraph 1(6), the words “, with the consent of the Treasury,”.	25

Health and Social Care (Community Health and Standards) Bill

A

B I L L

To amend the law about the National Health Service; to make provision about quality and standards in the provision of health and social care, including provision establishing the Commission for Healthcare Audit and Inspection and the Commission for Social Care Inspection; to amend the law about the recovery of NHS costs from persons making compensation payments; to provide for the replacement of the Welfare Food Schemes; to make provision about appointments to health and social care bodies; and for connected purposes.

*Presented by Mr Secretary Milburn
supported by
The Prime Minister, Mr Secretary Prescott,
Mr Chancellor of the Exchequer,
Secretary Margaret Beckett,
Mr Secretary Murphy, Mrs Secretary Liddell,
Ms Secretary Hewitt, Secretary Peter Hain
and Mr John Hutton.*

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