

# Health Bill

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## EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Department of Health, are published separately as Bill 69 – EN.

## EUROPEAN CONVENTION ON HUMAN RIGHTS

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

In my view the provisions of the Health Bill are compatible with the Convention rights.

# Health Bill

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Make provision for the prohibition of smoking in certain premises, places and vehicles; to make provision in relation to the prevention and control of health care associated infections; to make provision in relation to the management and use of controlled drugs; to make provision in relation to the supervision of certain dealings with medicinal products and the running of pharmacy premises, and about orders under the Medicines Act 1968 and orders amending that Act under the Health Act 1999; to make further provision about the National Health Service in England and Wales and about the recovery of National Health Service costs; to make provision for the establishment and functions of the Appointments Commission; to make further provision about the exercise of social care training functions; and for connected purposes.

**B**E 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**

SMOKE-FREE PREMISES, PLACES AND VEHICLES

*Introduction*

**1 Introduction**

- (1) This Part makes provision for the prohibition of smoking in certain premises, places and vehicles which are smoke-free by virtue of this Part. 5
- (2) In this Part—
- (a) “smoking” refers to smoking tobacco or anything which contains tobacco, or smoking any other substance; and
  - (b) smoking includes being in possession of lit tobacco or of anything lit which contains tobacco, or being in possession of any other lit substance in a form in which it could be smoked. 10

- (3) In this Part, “smoke” and other related expressions are to be read in accordance with subsection (2).

*Smoke-free premises, etc.*

## 2 Smoke-free premises

- (1) Premises are smoke-free if they are open to the public. 5  
But unless the premises also fall within subsection (2), they are smoke-free only when open to the public.
- (2) Premises are smoke-free if they are used as a place of work –  
(a) by more than one person (even if the persons who work there do so at different times, or only intermittently), or 10  
(b) where members of the public might attend for the purpose of seeking or receiving goods or services from the person or persons working there (even if members of the public are not always present).  
They are smoke-free all the time.
- (3) If only part of the premises is open to the public or (as the case may be) used as a place of work mentioned in subsection (2), the premises are smoke-free only to that extent. 15
- (4) In any case, premises are smoke-free only in those areas which are enclosed or substantially enclosed.
- (5) The appropriate national authority may specify in regulations what “enclosed” and “substantially enclosed” mean. 20
- (6) Section 3 provides for some premises, or areas of premises, not to be smoke-free despite this section.
- (7) Premises are “open to the public” if the public or a section of the public has access to them, whether by invitation or not, and whether on payment or not. 25
- (8) “Work”, in subsection (2), includes voluntary work.

## 3 Exemptions

- (1) The appropriate national authority may make regulations providing for specified descriptions of premises, or specified areas of them, not to be smoke-free despite section 2. 30
- (2) Examples of descriptions of premises which may be specified are the following, or any subset of the following –  
(a) premises where a person has his home, or is living whether permanently or temporarily (including hotels, care homes and prisons and other places where a person may be detained), 35  
(b) licensed premises,  
(c) premises in respect of which a club premises certificate is in force.
- (3) The regulations may provide that premises or areas of premises are not smoke-free in specified circumstances, if specified conditions are satisfied, or at specified times (or any combination of those). 40
- (4) The conditions may include –



- (a) in the case of licensed premises, conditions about what else (apart from alcohol) is or is not sold, offered for consumption or consumed there,
- (b) in the case of any premises, conditions requiring the designation in accordance with the regulations, by the person in charge of the premises, of any rooms in which smoking is to be permitted. 5

- (5) In this section –
  - “club premises certificate” has the meaning given by section 60 of the Licensing Act 2003 (c. 17),
  - “licensed premises” means premises in respect of which there is in force a premises licence under the Licensing Act 2003 authorising the consumption of alcohol on the premises. 10

#### 4 Additional smoke-free places

- (1) The appropriate national authority may make regulations designating as smoke-free any place or description of place that is not smoke-free under section 2. 15
- (2) The place, or places falling within the description, need not be enclosed or substantially enclosed.
- (3) The appropriate national authority may designate a place or description of place under this section only if satisfied that, without the designation, persons present there would be likely to be exposed to smoke. 20
- (4) The regulations may provide for such places, or places falling within the description, to be smoke-free only –
  - (a) in specified circumstances,
  - (b) at specified times,
  - (c) if specified conditions are satisfied, 25
  - (d) in specified areas,or any combination of those.

#### 5 Vehicles

- (1) The appropriate national authority may make regulations providing for vehicles to be smoke-free. 30
- (2) The regulations may in particular make provision –
  - (a) for the descriptions of vehicle which are to be smoke-free,
  - (b) for the circumstances in which they are to be smoke-free,
  - (c) for them to be smoke-free only in specified areas, or except in specified areas, 35
  - (d) for exemptions.
- (3) In this Part, “vehicle” means every type of vehicle, including train, vessel, aircraft and hovercraft.

*No-smoking signs***6 No-smoking signs**

- (1) It is the duty of any person who occupies or is concerned in the management of smoke-free premises to make sure that no-smoking signs complying with the requirements of this section are displayed in those premises in accordance with the requirements of this section. 5
- (2) Regulations made by the appropriate national authority may provide for a duty corresponding to that mentioned in subsection (1) in relation to –
- (a) places which are smoke-free by virtue of section 4,
  - (b) vehicles which are smoke-free by virtue of section 5. 10
- The duty is to be imposed on persons or descriptions of person specified in the regulations.
- (3) The signs must be displayed in accordance with any requirements contained in regulations made by the appropriate national authority.
- (4) The signs must conform to any requirements specified in regulations made by the appropriate national authority (for example, requirements as to content, size, design, colour, or wording). 15
- (5) A person who fails to comply with the duty in subsection (1), or any corresponding duty in regulations under subsection (2), commits an offence.
- (6) It is a defence for a person charged with an offence under subsection (5) to show – 20
- (a) that he did not know, and could not reasonably have been expected to know, that the premises were smoke-free (or, as the case may be, that the place or vehicle was smoke-free), or
  - (b) that he did not know, and could not reasonably have been expected to know, that no-smoking signs complying with the requirements of this section were not being displayed in accordance with the requirements of this section, or 25
  - (c) that on other grounds it was reasonable for him not to comply with the duty. 30
- (7) If a person charged with an offence under subsection (5) relies on a defence in subsection (6), and evidence is adduced which is sufficient to raise an issue with respect to that defence, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.
- (8) A person guilty of an offence under subsection (5) is liable on summary conviction to a fine not exceeding a level on the standard scale specified in regulations made by the Secretary of State. 35
- (9) The references in this section, however expressed, to premises, places or vehicles which are smoke-free, are to those premises, places or vehicles so far as they are smoke-free under or by virtue of this Part. 40

*Offences relating to smoking in smoke-free premises, etc.***7 Offence of smoking in smoke-free place**

- (1) In this section, a “smoke-free place” means any of the following –

- (a) premises, so far as they are smoke-free under or by virtue of sections 2 and 3,
    - (b) a place, so far as it is smoke-free by virtue of section 4,
    - (c) a vehicle, so far as it is smoke-free by virtue of section 5.
  - (2) A person who smokes in a smoke-free place commits an offence. 5
  - (3) It is a defence for a person charged with an offence under subsection (2) to show that he did not know, and could not reasonably have been expected to know, that it was a smoke-free place.
  - (4) If a person charged with an offence under this section relies on a defence in subsection (3), and evidence is adduced which is sufficient to raise an issue with respect to that defence, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not. 10
  - (5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding a level on the standard scale specified in regulations made by the Secretary of State. 15
- 8 Fixed penalties for offence of smoking in smoke-free place**
- (1) An authorised officer of an enforcement authority (see section 10) who has reason to believe that a person has committed an offence under section 7(2) on premises, or in a place or vehicle, in relation to which the authorised officer has functions may give him a penalty notice in respect of the offence. 20
  - (2) A penalty notice is a notice offering a person the opportunity to discharge any liability to conviction for the offence to which the notice relates by paying a penalty in accordance with this Part.
  - (3) Schedule 1 makes further provision about fixed penalties.
- 9 Offence of failing to prevent smoking in smoke-free place** 25
- (1) It is the duty of any person who controls or is concerned in the management of smoke-free premises to cause a person smoking there to stop smoking.
  - (2) Regulations made by the appropriate national authority may provide for a duty corresponding to that mentioned in subsection (1) in relation to—
    - (a) places which are smoke-free by virtue of section 4,
    - (b) vehicles which are smoke-free by virtue of section 5.The duty is to be imposed on persons or descriptions of person specified in the regulations. 30
  - (3) A person who fails to comply with the duty in subsection (1), or any corresponding duty in regulations under subsection (2), commits an offence. 35
  - (4) It is a defence for a person charged with an offence under subsection (3) to show—
    - (a) that he took reasonable steps to cause the person in question to stop smoking, or
    - (b) that he did not know, and could not reasonably have been expected to know, that the person in question was smoking, or
    - (c) that on other grounds it was reasonable for him not to comply with the duty. 40

- (5) If a person charged with an offence under this section relies on a defence in subsection (4), and evidence is adduced which is sufficient to raise an issue with respect to that defence, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.
- (6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding a level on the standard scale specified in regulations made by the Secretary of State. 5
- (7) The references in this section, however expressed, to premises, places or vehicles which are smoke-free, are to those premises, places or vehicles so far as they are smoke-free under or by virtue of this Part. 10

### *Enforcement*

## **10 Enforcement**

- (1) The appropriate national authority may make regulations designating the bodies or descriptions of body which are to be enforcement authorities for the purposes of this Part. 15
- (2) The regulations –
- (a) must specify the descriptions of premises, place or vehicle in relation to which an enforcement authority has enforcement functions,
  - (b) may provide for a case being dealt with by one enforcement authority to be transferred (or further transferred, or transferred back) to, and taken over by, another enforcement authority. 20
- (3) It is the duty of an enforcement authority to enforce, as respects the premises, places and vehicles in relation to which it has enforcement functions, the provisions of this Part and regulations made under it.
- (4) The appropriate national authority may direct, in relation to cases of a particular description or a particular case, that any duty imposed on an enforcement authority by subsection (3) is to be discharged instead by the appropriate national authority. 25
- (5) In this Part, “authorised officer”, in relation to an enforcement authority, means any person (whether or not an officer of the authority) who is authorised by it in writing, either generally or specially, to act in matters arising under this Part. 30
- (6) If regulations under this section so provide, no person is to be so authorised unless he has such qualifications as are prescribed by the regulations.
- (7) Schedule 2 makes provision about powers of entry, etc.

## **11 Obstruction etc. of officers**

- (1) Any person who intentionally obstructs an authorised officer of an enforcement authority, acting in the exercise of his functions under or by virtue of this Part, commits an offence. 35
- (2) Any person who without reasonable cause fails to give to an authorised officer of an enforcement authority, acting in the exercise of his functions under or by virtue of this Part, any facilities, assistance or information which the authorised officer reasonably requires of him for the performance of those functions commits an offence. 40

- (3) A person commits an offence if, in purported compliance with any requirement of an authorised officer mentioned in subsection (2) –
- (a) he makes a statement which is false or misleading, and
  - (b) he either knows that it is false or misleading or is reckless as to whether it is false or misleading.
- “False or misleading” means false or misleading in a material particular. 5
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (5) If a direction of the appropriate national authority has effect under section 10(4), this section has effect, in relation to any case or case of a description specified in the direction, as if references to an authorised officer of an enforcement authority were to a person acting on behalf of the appropriate national authority. 10

*Interpretation, etc.*

**12 Interpretation and territorial sea** 15

- (1) In this Part –
- “authorised officer” has the meaning given by section 10(5),
  - “premises” includes a tent, a moveable structure and an offshore installation (as defined in regulation 3 of the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995 (S.I. 1995/738)),
  - “specified”, in relation to regulations, means specified in the regulations,
  - “vehicle” is to be construed in accordance with section 5(3).
- (2) The appropriate national authority may by order provide for the definition of “premises” in subsection (1) to be read as if a reference to another enactment were substituted for the reference to regulation 3 of the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995. 25
- (3) This Part –
- (a) has effect in relation to the territorial sea adjacent to England as it has effect in relation to England, and
  - (b) has effect in relation to the territorial sea adjacent to Wales as it has effect in relation to Wales.
- (4) The following have effect for the purposes of subsection (3) if or in so far as expressed to apply for the general or residual purposes of the Act in question or for the purposes of this section – 35
- (a) an Order in Council under section 126(2) of the Scotland Act 1998 (c. 46),
  - (b) an order or Order in Council under or by virtue of section 155(2) of the Government of Wales Act 1998 (c. 38).

## PART 2

## PREVENTION AND CONTROL OF HEALTH CARE ASSOCIATED INFECTIONS

**13 Code of practice relating to health care associated infections**

After section 47 of the Health and Social Care (Community Health and Standards) Act 2003 (c. 43) (referred to in this Act as “the 2003 Act”) insert – 5

**“47A Code of practice relating to health care associated infections**

- (1) The Secretary of State may issue a code of practice –
  - (a) applying to bodies within subsection (2), and
  - (b) relating to the prevention and control of health care associated infections in connection with health care provided by or for those bodies. 10
- (2) The bodies within this subsection are –
  - (a) English NHS bodies other than Strategic Health Authorities; and
  - (b) cross-border SHAs. 15
- (3) The code may provide for provisions of the code to apply to –
  - (a) such description or descriptions of bodies within subsection (2) as may be specified in the code;
  - (b) such body or bodies within that subsection as may be so specified. 20
- (4) The code may in particular –
  - (a) make such provision as the Secretary of State considers appropriate for the purpose of safeguarding individuals (whether receiving health care or otherwise) from the risk, or any increased risk, of being exposed to health care associated infections; 25
  - (b) contain provisions imposing on bodies to which the provisions apply requirements in relation to health care provided for such bodies by other persons as well as in relation to health care provided by such bodies. 30
- (5) The code may –
  - (a) operate by reference to provisions of other documents specified in it (whether published by the Secretary of State or otherwise);
  - (b) provide for any reference in it to such a document to take effect as a reference to that document as revised from time to time; 35
  - (c) make different provision for different cases or circumstances.
- (6) Nothing in subsections (3) to (5) is to be read as prejudicing the generality of subsection (1).
- (7) The Secretary of State must keep the code under review and may from time to time – 40
  - (a) revise the whole or any part of the code, and
  - (b) issue a revised code.
- (8) In this section “health care associated infection” means any infection to which an individual may be exposed in circumstances where –

- (a) health care is being, or has been, provided to that or any other individual, and
    - (b) the risk of exposure to the infection is directly or indirectly attributable to the provision of the health care.
  - (9) But subsection (8) does not include an infection to which the individual is deliberately exposed as part of any health care. 5
  - (10) Any reference in this Part to a code of practice issued under this section includes a revised code issued under it.
- 47B Consultation etc.**
- (1) Where the Secretary of State proposes to issue a code of practice under section 47A, he must – 10
    - (a) prepare a draft of the code, and
    - (b) consult such persons as he considers appropriate about the draft.
  - (2) Where the Secretary of State proposes to issue a revised code under section 47A which in his opinion would result in a substantial change in the code, he must – 15
    - (a) prepare a draft of the revised code, and
    - (b) consult such persons as he considers appropriate about the change. 20
  - (3) Where, following consultation under subsection (1) or (2), the Secretary of State issues the code or revised code (whether in the form of the draft or with such modifications as he thinks fit), it comes into force at the time when it is issued by the Secretary of State.
  - (4) Where – 25
    - (a) any document by reference to whose provisions the code operates as mentioned in section 47A(5)(a) and (b) is a document published by the Secretary of State in connection with his functions relating to health,
    - (b) the Secretary of State proposes to revise the document, and 30
    - (c) in the opinion of the Secretary of State, the revision would result in a substantial change in the code,the Secretary of State must, before revising the document, consult such persons as he considers appropriate about the change.
  - (5) Where – 35
    - (a) any document by reference to whose provisions the code operates as mentioned in section 47A(5)(a) and (b) is not one to which subsection (4)(a) above applies,
    - (b) the document is revised, and
    - (c) in the opinion of the Secretary of State, the revision results in a 40substantial change in the code,  
the Secretary of State must consult such persons as he considers appropriate about whether the code should be revised in connection with the change.
  - (6) Consultation undertaken by the Secretary of State before the commencement of this section is as effective for the purposes of this section as consultation undertaken after that time. 45

<b>47C</b>	<b>Effect of code under section 47A</b>	
(1)	Where any provisions of a code of practice issued under section 47A apply to an NHS body, the body must observe those provisions in discharging its duty under section 45.	
(2)	A failure to observe any provision of a code of practice issued under section 47A does not of itself make a person liable to any criminal or civil proceedings.	5
(3)	A code of practice issued under section 47A is admissible in evidence in any criminal or civil proceedings.”	
<b>14</b>	<b>Code of practice: effects on existing functions of Commission for Healthcare Audit and Inspection</b>	<b>10</b>
(1)	Sections 50 to 52 and 54 of the 2003 Act are amended as follows.	
(2)	In section 50 (annual reviews), for subsection (4) substitute –	
“(4)	In exercising its functions under this section in relation to any health care, the CHAI must take into account –	15
(a)	the standards set out in statements published under section 46, and	
(b)	any code of practice issued under section 47A.	
(4A)	In conducting a review under subsection (1) in relation to a particular body to which provisions of such a code apply, the CHAI must accordingly consider (among other things) the extent, if any, to which those provisions are being observed by the body.”	20
(3)	In section 51 (reviews: England and Wales), in subsection (4)(a) after “section 46” insert “and any code of practice issued under section 47A”.	
(4)	In section 52 (reviews and investigations: England), for subsection (3) substitute –	25
“(3)	The CHAI has the function of conducting reviews of –	
(a)	the arrangements made by English NHS bodies and cross-border SHAs for the purpose of discharging their duty under section 45;	30
(b)	the arrangements made by particular bodies within paragraph (a) for the purpose of discharging that duty.”	
(5)	For section 52(5) substitute –	
“(5)	In exercising its functions under this section in relation to any health care, the CHAI must take into account –	35
(a)	the standards set out in statements published under section 46, and	
(b)	any code of practice issued under section 47A.	
(5A)	In conducting a review under subsection (3) in relation to a particular body to which provisions of such a code apply, the CHAI must accordingly consider (among other things) the extent, if any, to which those provisions are being observed by the body.”	40



- (6) In section 54 (functions relating to Secretary of State and Assembly), in subsection (2) after “section 46 or 47” insert “, or any code of practice issued under section 47A,”.

## 15 Code of practice: improvement notices

After section 53 of the 2003 Act insert – 5

### “53A Failings in connection with code under section 47A: improvement notices

- (1) This section applies where, following such a review or investigation as is mentioned in section 53(1), the CHAI –
- (a) is of the view that any provisions of a code of practice issued under section 47A and applying to an English NHS body or a cross-border SHA are not being observed in any material respect in relation to the provision of health care by or for the body, but 10
  - (b) having regard to all the circumstances, is not of the view that it is required to make a report under section 53(2) (or, if relevant, section 53(6)). 15
- (2) The CHAI may serve a notice under this section (an “improvement notice”) on the body in respect of the failure to observe the code, if it considers that serving the notice is the most appropriate course of action for it to take with a view to securing that the failure is remedied. 20
- (3) An improvement notice must –
- (a) state that the CHAI has formed the view mentioned in subsection (1)(a) in relation to the provision of health care by or for the body, giving particulars of the material respect in which the CHAI considers that the provisions of the code are not being observed as mentioned in that subsection, 25
  - (b) state the CHAI’s reasons for its view, and
  - (c) require the body to remedy the failure to observe the code, and to do so within such period as is specified in the notice. 30
- (4) An improvement notice may (but need not) include a recommendation by the CHAI as to the way in which the failure should be remedied.
- (5) An improvement notice may relate to more than one failure within subsection (1)(a), and in such a case –
- (a) subsections (2) to (4) and section 53B apply separately in relation to each such failure, but 35
  - (b) any report required by that section may relate to more than one such failure.
- (6) Where the CHAI serves an improvement notice on a body under this section, the CHAI must notify the Secretary of State and – 40
- (a) the regulator, if the body is an NHS foundation trust, and
  - (b) any relevant Strategic Health Authority, if the body is a Primary Care Trust or an NHS trust.
- (7) In this section and section 53B “relevant Strategic Health Authority” means – 45

- (a) in relation to a Primary Care Trust, any Strategic Health Authority whose area includes any part of the Trust’s area;
- (b) in relation to an NHS Trust (other than one responsible for providing ambulance services), the Strategic Health Authority in whose area all or most of the Trust’s hospitals, establishments or facilities are situated; 5
- (c) in relation to an NHS Trust responsible for providing ambulance services, the Strategic Health Authority in whose area the headquarters establishment responsible for the control of those services is situated. 10
- (8) Subsection (9) applies where –
- (a) an improvement notice is served on a body in respect of a particular failure to observe a code of practice issued under section 47A, and
- (b) a review under section 52(3)(b) is conducted by the CHAI in pursuance of section 53B(4)(a) with a view to assessing the body’s compliance with the notice. 15
- (9) In such a case subsection (1) –
- (a) does not apply in relation to that review so as to enable the CHAI to serve a further improvement notice on that body in respect of that failure; but 20
- (b) does apply in relation to that review so as to enable the CHAI (if the conditions in subsections (1) and (2) are satisfied) to serve an improvement notice on that body in respect of a different failure to observe the code. 25
- 53B Code of practice: action by CHAI following service of improvement notice**
- (1) This section applies where the CHAI has served an improvement notice on a body under section 53A.
- (2) If, before the end of the specified period – 30
- (a) the body requests the CHAI to extend that period, and
- (b) the CHAI considers that there are exceptional circumstances which justify its extending that period by a further period of time,
- the CHAI may, by a notice served on the body, extend the specified period by that further period. 35
- (3) In this section “the specified period” means –
- (a) the period specified under section 53A(3)(c), or
- (b) if that period has been extended under subsection (2) above, that period as so extended. 40
- (4) Where the specified period has ended or the body notifies the CHAI before the end of that period that it has complied with the improvement notice, the CHAI must –
- (a) conduct a review under section 52(3)(b) with a view to assessing the body’s compliance with the notice, and 45
- (b) then comply with subsection (5) or (6);

and the making of any report in accordance with subsection (5) or (6) is to be taken as satisfying the requirement to publish a report under section 52(7) in respect of the review.

- (5) If the CHAI –
  - (a) remains of the view that the relevant provisions of the code are not being observed in any material respect in relation to the provision of health care by or for the body, and 5
  - (b) having regard to all the circumstances, is of the view that it is required to make a report under section 53(2) (and, if relevant, section 53(6)), 10the CHAI must accordingly make a report under that provision (or, as the case may be, under each of those provisions).
- (6) If the CHAI does not make any such report or reports, it must instead make a report –
  - (a) to the Secretary of State, and 15
  - (b) (if the body is an NHS foundation trust) to the regulator, setting out the matters mentioned in subsection (7) or (8).
- (7) If the CHAI is of the view that the relevant provisions of the code are being observed in relation to the provision of health care by or for the body, the matters are – 20
  - (a) that the CHAI is of that view, and
  - (b) its reasons for that view.
- (8) If the CHAI is of the view that the relevant provisions of the code are not being so observed in any respect (material or otherwise), the matters are – 25
  - (a) that the CHAI is of that view,
  - (b) its reasons for that view,
  - (c) if its view is that those provisions are not being observed in any material respect, its reasons for not forming the view mentioned in subsection (5)(b), and 30
  - (d) (whether or not paragraph (c) applies) any action which it proposes to take in relation to the body in connection with the failure to observe the code.
- (9) The CHAI must send a copy of any report made by it in accordance with subsection (5) or (6) in relation to a Primary Care Trust or an NHS trust to the relevant Strategic Health Authority. 35
- (10) In this section “the relevant provisions of the code” means the provisions of the code in relation to which the CHAI formed the view mentioned in section 53A(1)(a).”

### PART 3

#### DRUGS, MEDICINES AND PHARMACIES

#### CHAPTER 1

##### SUPERVISION OF MANAGEMENT AND USE OF CONTROLLED DRUGS

<b>16</b>	<b>Accountable officers and their responsibilities as to controlled drugs</b>	<b>5</b>
	(1) The relevant authority may by regulations make provision for or in connection with requiring designated bodies to nominate or appoint persons who are to have prescribed responsibilities in relation to the safe, appropriate and effective management and use of controlled drugs in connection with –	
	(a) activities carried on by or on behalf of the designated bodies, and	10
	(b) activities carried on by or on behalf of bodies or persons providing services under arrangements made with the designated bodies.	
	(2) The person who is to be so nominated or appointed by a designated body is to be known as its accountable officer.	
	This is subject to any regulations made by virtue of subsection (5)(e).	15
	(3) In this Chapter “designated body” means –	
	(a) a body falling within any description of bodies prescribed as designated bodies for the purposes of this section, or	
	(b) a body prescribed as a responsible body for those purposes.	
	(4) The bodies that may be prescribed as designated bodies for the purposes of this section are bodies appearing to the relevant authority –	20
	(a) to be directly or indirectly concerned with the provision of health care (whether or not for the purposes of the health service), or	
	(b) to be otherwise carrying on activities that involve, or may involve, the supply or administration of controlled drugs.	25
	(5) Regulations under this section may make provision –	
	(a) for conditions that must be satisfied in relation to a person if he is to be nominated or appointed by a designated body as the body’s accountable officer;	
	(b) for a single person to be nominated or appointed as the accountable officer for each of two or more designated bodies where those bodies are satisfied as to the prescribed matters;	30
	(c) requiring a designated body that has an accountable officer to provide the officer with funds and other resources necessary for enabling the officer to discharge his responsibilities as accountable officer for the body;	35
	(d) for ensuring that an accountable officer, in discharging his responsibilities, has regard to best practice in relation to the use of controlled drugs;	
	(e) for the persons required to be nominated or appointed as mentioned in subsection (1) to be known by such name as is prescribed;	40
	(f) for making such amendments of any enactment as appear to the relevant authority to be required in connection with any provision made in pursuance of paragraph (e);	

- (g) for creating offences punishable on summary conviction by a fine not exceeding level 5 on the standard scale or for creating other procedures for enforcing any provisions of the regulations.
- (6) The responsibilities that may be imposed on a designated body’s accountable officer by regulations under this section include responsibilities as to the establishment and operation of arrangements for – 5
- (a) securing the safe management and use of controlled drugs;
  - (b) monitoring and auditing the management and use of such drugs;
  - (c) ensuring that relevant individuals receive appropriate training and that their training needs are regularly reviewed; 10
  - (d) monitoring and assessing the performance of such individuals in connection with the management or use of such drugs;
  - (e) making periodic inspections of premises used in connection with the management or use of such drugs;
  - (f) recording, assessing and investigating concerns expressed about incidents that may have involved improper management or use of such drugs; 15
  - (g) ensuring that appropriate action is taken for the purpose of protecting patients or members of the public in cases where such concerns appear to be well-founded; 20
  - (h) where required by regulations under section 17, the sharing of information.
- (7) The arrangements mentioned in subsection (6) may be arrangements established (according to the circumstances) – 25
- (a) by the accountable officer,
  - (b) by the designated body (or any of the designated bodies) for which he is the accountable officer, or
  - (c) by a body or person acting on behalf of, or providing services under arrangements made with, the designated body (or any of the designated bodies). 30
- (8) In subsection (6) –
- (a) references to the management or use of controlled drugs are to the management or use of drugs in connection with activities carried on by a body or person within subsection (7)(b) or (c), and
  - (b) “relevant individual” means a person who, whether as – 35
    - (i) a health care professional, or
    - (ii) an employee who is not a health care professional, or
    - (iii) otherwise,
 is engaged in any activity carried on by a body or person within subsection (7)(b) or (c) that involves, or may involve, the management or use of controlled drugs. 40
- (9) A designated body may confer on its accountable officer such powers as it thinks appropriate to enable him to discharge any of the responsibilities imposed on him as accountable officer for the body by regulations under this section. 45
- (10) Nothing in subsections (5) to (7) is to be read as prejudicing the generality of subsection (1).
- (11) In this section “prescribed” means prescribed by regulations under this section.

## 17 Co-operation between health bodies and other organisations

- (1) The relevant authority may by regulations make provision for or in connection with requiring responsible bodies to co-operate with each other in connection with—
- (a) the identification of cases in which action may need to be taken in respect of matters arising in relation to the management or use of controlled drugs by relevant individuals; 5
  - (b) the consideration of issues relating to the taking of action in respect of such matters;
  - (c) the taking of action in respect of such matters. 10
- (2) In this Chapter “responsible body” means—
- (a) a body falling within any description of bodies prescribed as responsible bodies for the purposes of this section, or
  - (b) a body prescribed as a responsible body for those purposes.
- (3) The bodies that may be prescribed as responsible bodies for the purposes of this section are— 15
- (a) bodies which fall within subsection (4); and
  - (b) police forces.
- (4) Bodies fall within this subsection if they appear to the relevant authority—
- (a) to be directly or indirectly concerned with the provision of health care (whether or not for the purposes of the health service), 20
  - (b) to be otherwise carrying on activities that involve, or may involve, the supply or administration of controlled drugs,
  - (c) to have powers of inspection in relation to the management or use of controlled drugs, 25
  - (d) to be public or local authorities with responsibilities in relation to social care, or
  - (e) to be public or local authorities (not within paragraphs (a) to (d)) whose responsibilities include responsibilities with respect to matters such as are mentioned in subsection (1). 30
- (5) Regulations under this section may make provision—
- (a) for requiring a responsible body to disclose information to any other such body or bodies in prescribed circumstances, or in circumstances where it appears to the responsible body that the prescribed conditions are satisfied, whether or not the disclosure of information has been requested; 35
  - (b) in relation to a responsible body which has an accountable officer, for requiring disclosures to be made by or to that officer instead of by or to the body;
  - (c) in relation to a responsible body which is a police force, for imposing duties on the chief officer; 40
  - (d) for requiring a responsible body, in prescribed circumstances, to consult the prescribed accountable officer in connection with any requirement imposed on the body under the regulations;
  - (e) for imposing duties on accountable officers in relation to the taking of action for the purpose of protecting the safety of patients or the general public. 45

- (6) The duties that may be imposed on an accountable officer in pursuance of subsection (5)(e) include a duty to make recommendations to a responsible body as to any action which the officer considers that the body should take for the purpose mentioned in that provision.
- (7) The action that may be so recommended includes action in relation to the institution of disciplinary proceedings. 5
- (8) Nothing in subsections (5) to (7) is to be read as prejudicing the generality of subsection (1).
- (9) In this section –
- (a) “chief officer” means – 10
- (i) in relation to a police force in England and Wales, the chief officer of police;
- (ii) in relation to a police force in Scotland, the chief constable;
- (iii) in relation to the Police Service of Northern Ireland or the Police Service of Northern Ireland Reserve, the Chief Constable of the Police Service of Northern Ireland; 15
- (b) “police force” means –
- (i) a police force in England, Wales or Scotland, or
- (ii) the Police Service of Northern Ireland or the Police Service of Northern Ireland Reserve; 20
- (c) “prescribed” means prescribed by regulations under this section;
- (d) “relevant individual” means a person who, whether as –
- (i) a health care professional, or
- (ii) an employee who is not a health care professional, or
- (iii) otherwise, 25
- is engaged in any activity carried on by a designated body, or by a body or person acting on behalf of, or providing services under arrangements made with, a designated body that involves, or may involve, the management or use of controlled drugs.
- 18 Controlled drugs: power to enter and inspect** 30
- (1) A constable or an authorised person may, for the purpose of securing the safe, appropriate and effective management and use of controlled drugs –
- (a) enter any relevant premises;
- (b) inspect any precautions taken on the premises for the safe custody of controlled drugs; 35
- (c) inspect any stocks of controlled drugs kept on the premises;
- (d) require any relevant records kept on the premises to be produced for his inspection.
- (2) The powers conferred by subsection (1) may be exercised only –
- (a) at a reasonable hour, and 40
- (b) on production (if required) of the written authority of the person exercising them.
- (3) The power conferred by subsection (1)(d) includes power –
- (a) to take copies of or extracts from relevant records, and

- (b) to take possession of any relevant records kept on the premises and retain them for so long as the person exercising the power considers necessary.
- (4) In this section “authorised person” means (subject to subsection (5)) –
- (a) a person authorised by the relevant authority, 5
  - (b) an accountable officer, and
  - (c) where a designated body is required by regulations under section 16 to nominate or appoint an accountable officer, a member of the staff of the designated body authorised by it.
- Authorisations given under this subsection may be general or specific. 10
- (5) The accountable officer of a designated body of a description specified in directions given by the relevant authority is not an authorised person for the purposes of this section; and such a designated body may not authorise members of its staff under subsection (4)(c).
- (6) The relevant authority may by regulations prescribe descriptions of premises which are to be “relevant premises” for the purposes of subsection (1) in relation to constables and authorised persons of descriptions prescribed in the regulations. 15
- (7) The premises that may be so prescribed are premises (or parts thereof) appearing to the relevant authority to be used in connection with – 20
- (a) the provision of health care (whether or not for the purposes of the health service), or
  - (b) the supply or administration of controlled drugs.
- (8) In this Chapter “relevant records” means records kept with respect to controlled drugs in pursuance of regulations under section 10 of the Misuse of Drugs Act 1971 (c. 38). 25
- (9) Directions under subsection (5) are to be given by regulations or in writing; but any such directions which relate to more than one designated body are to be given by regulations.
- (10) Directions under subsection (5) given in writing may be varied or revoked by subsequent directions under that subsection. 30

## **19 Offences in connection with power to enter and inspect**

- (1) A person commits an offence if he –
- (a) intentionally obstructs a person in the exercise of his powers under section 18(1), 35
  - (b) conceals from a person acting under section 18(1) anything which that person is entitled to inspect, or
  - (c) without reasonable excuse fails to produce any relevant records which a person acting under section 18(1) requires to be produced.
- (2) A person guilty of an offence under subsection (1) is liable – 40
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both;
  - (b) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum, or to both.



- (3) In the application of this section to Scotland and Northern Ireland, the reference to 12 months in subsection (2)(b) is to be read as a reference to 6 months.

## 20 Guidance

- (1) The relevant authority may issue guidance to designated bodies in connection with— 5
- (a) determining whether conditions specified in regulations under section 16 have been satisfied in relation to the nomination or appointment of a person as a designated body’s accountable officer;
  - (b) the discharge by a designated body’s accountable officer of any responsibilities imposed on him by regulations under section 16; 10
  - (c) the exercise by designated bodies of their powers under section 16(9);
  - (d) the exercise by designated bodies of their powers under section 18(4)(c).
- (2) The relevant authority may issue guidance to responsible bodies in connection with their discharge of any duties imposed on them by regulations under section 17. 15
- (3) Guidance under this section may make different provision for different cases or circumstances.
- (4) Designated bodies and responsible bodies must have regard to any guidance under this section in exercising any functions to which the guidance relates. 20

## 21 Crown application

- (1) This Chapter binds the Crown.
- (2) No contravention by the Crown of any provision of this Chapter shall make the Crown criminally liable; but the High Court (or, in Scotland, the Court of Session) may declare unlawful any act or omission of the Crown which constitutes such a contravention. 25
- (3) The provisions of this Chapter apply to persons in the public service of the Crown as they apply to other persons.

## 22 Relevant authorities 30

- (1) This section applies to functions conferred on the relevant authority by this Chapter.
- (2) Subject to subsection (4), any functions to which this section applies are exercisable in relation to England by the Secretary of State.
- (3) Subject to subsection (4), any functions to which this section applies are exercisable in relation to Wales by the National Assembly for Wales. 35
- (4) Any power of the relevant authority to make regulations under this Chapter is exercisable in relation to cross-border bodies by the Secretary of State after consultation with the Assembly.
- (5) A “cross-border body” is a body which— 40
- (a) performs (and only performs) functions in respect of England and Wales, and

- (b) does not perform functions mainly in respect of England or mainly in respect of Wales.
- (6) Any functions to which this section applies are exercisable in relation to Scotland by the Secretary of State after consultation with the Scottish Ministers.
- (7) Any functions to which this section applies are exercisable in relation to Northern Ireland by the Department of Health, Social Services and Public Safety. 5

## 23 Interpretation

- (1) In this Chapter –
  - “accountable officer” is to be read in accordance with section 16(2); 10
  - “body” includes an unincorporated association;
  - “controlled drug” has the meaning given by section 2 of the Misuse of Drugs Act 1971 (c. 38);
  - “designated body” has the meaning given by section 16(3);
  - “health care” means – 15
    - (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;
  - “health care professional” –
    - (a) in relation to England and Wales, has the meaning given by section 28X(3)(a) of the National Health Service Act 1977 (c. 49) (referred to in this Act as “the 1977 Act”), 20
    - (b) in relation to Scotland, has the meaning given by section 17D(2) of the National Health Service (Scotland) Act 1978 (c. 29), and
    - (c) in relation to Northern Ireland, has the meaning given by Article 15C of the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I. 14)); 25
  - “illness” –
    - (a) in relation to England and Wales, has the meaning given by section 128(1) of the 1977 Act, 30
    - (b) in relation to Scotland, has the meaning given by section 108(1) of the National Health Service (Scotland) Act 1978, and
    - (c) in relation to Northern Ireland, has the meaning given by Article 2(2) of the Health and Personal Social Services (Northern Ireland) Order 1972; 35
  - “relevant authority” is to be read in accordance with section 22;
  - “relevant records” has the meaning given by section 18(8);
  - “responsible body” has the meaning given by section 17(2).
- (2) In this Chapter any reference to the management or use of controlled drugs includes – 40
  - (a) the storage, carriage and safe custody of such drugs,
  - (b) the prescribing and supply of such drugs,
  - (c) the administration of such drugs,
  - (d) the recovery of such drugs when no longer needed, and
  - (e) the disposal of such drugs. 45

## CHAPTER 2

### MEDICINES AND PHARMACIES

#### 24 Requirements about supervision

- (1) In section 10 of the Medicines Act 1968 (c. 67) (which provides for exemptions for pharmacists in relation to certain dealings with medicinal products), after subsection (7) insert – 5
- “(7A) The Health Ministers may make regulations prescribing conditions which must be complied with if a thing is to be considered for the purposes of this section as done under the supervision of a pharmacist.
- (7B) Compliance with the applicable conditions is sufficient for the thing to be so considered. 10
- (7C) Conditions prescribed under subsection (7A) may relate to supervision in the case where the pharmacist is not at the place where the thing is being done.”
- (2) In section 52 of that Act (sale or supply of medicines not on general sale list) – 15
- (a) the existing text is to be subsection (1),
- (b) after that subsection insert –
- “(2) The Health Ministers may make regulations prescribing conditions which must be complied with if a transaction mentioned in subsection (1)(c) is to be considered for the purposes of this section as done under the supervision of a pharmacist. 20
- (3) Compliance with the applicable conditions is sufficient for the transaction to be so considered.
- (4) Conditions prescribed under subsection (2) may relate to supervision in the case where the pharmacist is not on the premises.” 25

#### 25 Control of pharmacy premises: individuals and partnerships

- (1) For section 70 of the Medicines Act 1968 (pharmacy business carried on by individual pharmacist or by partners) substitute – 30
- “70 Business carried on by individual pharmacist or by partners**
- (1) The conditions referred to in section 69(1)(a) of this Act are that subsections (2) and (3) of this section are both satisfied as respects each of the premises where the retail pharmacy business is carried on and medicinal products, other than medicinal products on a general sale list, are sold by retail. 35
- (2) This subsection is satisfied if a responsible pharmacist who satisfies the requirements of subsections (4) and (5) of this section is in charge of the business at those premises, so far as concerns –
- (a) the retail sale at those premises of medicinal products (whether they are on a general sale list or not), and 40

- (b) the supply at those premises of such products in circumstances corresponding to retail sale.
- (3) This subsection is satisfied if a notice is conspicuously displayed at those premises stating –
- (a) the name of the responsible pharmacist for the time being, 5
  - (b) the number of his registration under the Pharmacy Act 1954 or (in relation to Northern Ireland) the Pharmacy (Northern Ireland) Order 1976, and
  - (c) the fact that he is for the time being in charge of the business at those premises. 10
- (4) The responsible pharmacist must be –
- (a) the person carrying on the business, or
  - (b) if the business is carried on by a partnership, one of the partners or, in Scotland, one of the partners who is a pharmacist, or
  - (c) another pharmacist. 15
- (5) In relation to premises in Great Britain that have been registered pharmacies for less than three years, the responsible pharmacist may not be a person who is a pharmacist by virtue of section 4A of the Pharmacy Act 1954 (qualification by European diploma) or any corresponding provision applying to Northern Ireland.” 20
- (2) In section 78 of the Medicines Act 1968 (c. 67) (restrictions on use of titles, descriptions and emblems), in subsection (7), for the words from “under whose” to the end substitute “who is in charge of the business at those premises (so far as concerns the retail sale of medicinal products or the supply of such products in circumstances corresponding to retail sale) is also a pharmacist”. 25

## 26 Control of pharmacy premises: bodies corporate

- (1) For section 71 of the Medicines Act 1968 (pharmacy business carried on by body corporate) substitute –
- “71 Business carried on by body corporate**
- (1) The conditions referred to in section 69(1)(b) of this Act are – 30
- (a) that the retail pharmacy business, so far as concerns the keeping, preparing and dispensing of medicinal products other than medicinal products on a general sale list, is under the management of a superintendent in respect of whom the requirements specified in subsection (6) of this section are fulfilled, and 35
  - (b) that subsections (2) and (3) of this section are both satisfied as respects each of the premises where the business is carried on and medicinal products, other than medicinal products on a general sale list, are sold by retail. 40
- (2) This subsection is satisfied if a responsible pharmacist who satisfies the requirements of subsections (4) and (5) of this section is in charge of the business at the premises mentioned in subsection (1)(b) of this section, so far as concerns –
- (a) the retail sale at those premises of medicinal products (whether they are on a general sale list or not), and 45

- (b) the supply at those premises of such products in circumstances corresponding to retail sale.
  - (3) This subsection is satisfied if a notice is conspicuously displayed at those premises stating –
    - (a) the name of the responsible pharmacist for the time being, 5
    - (b) the number of his registration under the Pharmacy Act 1954 or (in relation to Northern Ireland) the Pharmacy (Northern Ireland) Order 1976, and
    - (c) the fact that he is for the time being in charge of the business at those premises. 10
  - (4) The responsible pharmacist must be –
    - (a) the superintendent mentioned in subsection (1)(a) of this section, or
    - (b) a manager or assistant subject to the directions of the superintendent and who is a pharmacist. 15
  - (5) In relation to premises in Great Britain that have been registered pharmacies for less than three years, the responsible pharmacist may not be a person who is a pharmacist by virtue of section 4A of the Pharmacy Act 1954 (qualification by European diploma) or any corresponding provision applying to Northern Ireland. 20
  - (6) The requirements referred to in subsection (1)(a) of this section in relation to a superintendent are that –
    - (a) he is a pharmacist,
    - (b) a statement in writing signed by him, and signed on behalf of the body corporate, specifying his name and stating whether he is a member of the board of that body or not, has been sent to the registrar, and 25
    - (c) he does not act in a similar capacity for any other body corporate.”
  - (2) In section 124 of the Medicines Act 1968 (c. 67) (offences by bodies corporate), in subsection (2)(b), for “subsection (1)(a)” substitute “subsection (4)(b)”. 30
- 27 Control of pharmacy premises: representative of pharmacist in case of death or disability**
- In section 72 of the Medicines Act 1968 (representative of pharmacist in case of death or disability), for subsection (2) substitute – 35
- “(2) The conditions referred to in section 69(1)(c) of this Act are –
    - (a) that the name and address of the representative, and the name of the pharmacist whose representative he is, have been notified to the registrar, and
    - (b) that subsections (2A) and (2B) of this section are both satisfied as respects each of the premises at which the business is carried on and medicinal products, other than medicinal products on a general sale list, are sold by retail. 40
  - (2A) This subsection is satisfied if a responsible pharmacist is in charge of the business at the premises mentioned in subsection (2)(b) of this section, so far as concerns – 45

- (a) the retail sale at those premises of medicinal products (whether they are on a general sale list or not), and
  - (b) the supply at those premises of such products in circumstances corresponding to retail sale.
- (2B) This subsection is satisfied if a notice is conspicuously displayed at those premises stating –
- (a) the name of the responsible pharmacist for the time being,
  - (b) the number of his registration under the Pharmacy Act 1954 or (in relation to Northern Ireland) the Pharmacy (Northern Ireland) Order 1976, and
  - (c) the fact that he is for the time being in charge of the business at those premises.”

## 28 The responsible pharmacist

- (1) After section 72 of the Medicines Act 1968 (c. 67) insert –
- “72A The responsible pharmacist**
- (1) It is the duty of the responsible pharmacist mentioned in sections 70, 71 and 72 of this Act to secure the safe and effective running of the pharmacy business at the premises in question so far as concerns –
- (a) the retail sale at those premises of medicinal products (whether they are on a general sale list or not), and
  - (b) the supply at those premises of such products in circumstances corresponding to retail sale.
- (2) A person may not be the responsible pharmacist in respect of more than one set of premises at the same time, except in circumstances specified by the Health Ministers in regulations.
- (3) The responsible pharmacist must establish (if they are not already established), maintain and keep under review procedures designed to secure the safe and effective running of the business as mentioned in subsection (1) of this section.
- (4) The responsible pharmacist must make a record (which must be available at the premises) of –
- (a) who the responsible pharmacist is in relation to the premises on any day and at any time, and
  - (b) such other matters as the Health Ministers specify in regulations.
- (5) It is the duty of the person carrying on the business to secure that –
- (a) the record is properly maintained, and
  - (b) it is preserved for at least as long as is specified in regulations made by the Health Ministers.
- (6) The Health Ministers may make further provision in regulations in relation to the responsible pharmacist.
- (7) The regulations may, in particular, make further provision about the matters mentioned in subsections (1) to (4) of this section, and make provision about –

- (a) the qualifications and experience which a person must have if he is to be a responsible pharmacist,
  - (b) the responsible pharmacist’s absence from the premises,
  - (c) the supervision by the responsible pharmacist, when he is not present on the premises, of relevant activities there, 5
  - (d) circumstances in which the responsible pharmacist may supervise relevant activities at a pharmacy of which he is not the responsible pharmacist,
  - (e) the form in which the procedures referred to in subsection (3) of this section are to be recorded and matters which must be covered by them, 10
  - (f) the form in which the record referred to in subsection (4) of this section is to be kept and particulars which must be included in it.
- (8) A person who does not have the qualifications and experience required by regulations under subsection (7)(a) is not to be considered as a responsible pharmacist for the purposes of sections 70 to 72 of this Act. 15
- (9) Subsection (10) applies if a person –
- (a) fails to comply with the requirements of subsection (2) or regulations made under it, 20
  - (b) fails to comply with any requirements as to absence from the premises contained in regulations under subsection (7)(b).
- (10) If this subsection applies, the person in question is not to be considered while the failure continues as being in charge of the business at the premises in question (or in a subsection (9)(a) case at any of them) for the purposes of sections 70 to 72 of this Act. 25
- (11) In subsection (7)(c) and (d), “relevant activities” means things mentioned in section 10 and transactions mentioned in section 52(1)(c) of this Act.”
- (2) In section 77 of the Medicines Act 1968 (c. 67) (annual return of premises to registrar), omit paragraph (b) and the “and” immediately preceding it. 30
- (3) In section 84 of the Medicines Act 1968 (offences), before subsection (1) insert –
- “(A1) A person who fails to comply with either of the following shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale – 35
- (a) subsection (4) of section 72A of this Act (which requires the responsible pharmacist to make entries in the record),
  - (b) subsection (5) of that section (which requires the keeping and preservation of a record relating to the responsible pharmacist).” 40
- (4) In section 108 of the Medicines Act 1968 (enforcement in England and Wales), in subsection (2) –
- (a) after paragraph (a) insert –  
“(aa) the provisions of subsections (4) and (5) of section 72A of this Act;”, 45
  - (b) after “paragraphs (a)” insert “, (aa)”.

- (5) In section 110 of the Medicines Act 1968 (c. 67) (enforcement in Northern Ireland), in subsection (2), after “paragraphs (a)”, in both places, insert “, (aa)”.

## 29 Order-making powers

In section 129 of the Medicines Act 1968 (orders and regulations), in subsection (5) –

- (a) after “power to make” insert “an order or”,  
 (b) after “making the” insert “order or”.

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## 30 Orders under s.60 of the Health Act 1999

In Schedule 3 to the Health Act 1999 (c. 8) (which makes further provision about orders under section 60 of that Act regulating health care professions), omit paragraph 2(2) (which imposes a limitation on amendment of the Medicines Act 1968).

10

### PART 4

#### THE NATIONAL HEALTH SERVICE

#### CHAPTER 1

15

#### PHARMACEUTICAL SERVICES

## 31 Power to charge

- (1) After section 42 of the 1977 Act insert –

### “42A Power to charge: England

- (1) The Secretary of State may give directions to a Primary Care Trust requiring it to charge a fee in cases or descriptions of case specified in the directions to persons who make an application referred to in section 42(2)(c)(i) or (ii) to the Primary Care Trust.

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- (2) The Secretary of State may in the directions –

- (a) specify the fee himself, or  
 (b) require the Primary Care Trust to determine the amount of the fee in accordance with any requirements set out in the directions.

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- (3) Before determining the amount of the fee-

- (a) in a subsection (2)(a) case, the Secretary of State must consult such organisations as he thinks fit that appear to him to represent persons providing pharmaceutical services and such organisations as he thinks fit that appear to him to represent Primary Care Trusts,

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- (b) in a subsection (2)(b) case, the Primary Care Trust must undertake any consultation required by the directions.

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- (4) The Secretary of State must publish in such manner as he thinks fit any directions he gives under this section.

- (5) In a subsection (2)(b) case, the Primary Care Trust must publish in such manner as it thinks fit the fee which it determines.

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#### **42B Power to charge: Wales**

- (1) The National Assembly for Wales may charge a fee to persons who make an application referred to in section 42(2)(c)(i) or (ii) to the Assembly.
- (2) The Assembly may determine the amount of the fee as it thinks fit, and may in particular charge a flat fee or charge different fees in different cases or descriptions of case. 5
- (3) Subsections (4) and (5) apply if the Assembly directs a Local Health Board under section 16BB to exercise its functions of receiving and determining applications referred to in section 42(2)(c)(i) or (ii). 10
- (4) The Assembly may give directions to the Local Health Board requiring it to charge a fee in cases or descriptions of case specified in the directions to persons who make an application referred to in section 42(2)(c)(i) or (ii) to the Local Health Board.
- (5) The Assembly may in the directions – 15
  - (a) specify the fee itself, or
  - (b) require the Local Health Board to determine the amount of the fee in accordance with any requirements set out in the directions.
- (6) Before determining the amount of the fee – 20
  - (a) in a subsection (1) case, the Assembly must consult such organisations as it thinks fit that appear to it to represent persons providing pharmaceutical services,
  - (b) in a subsection (5)(a) case, the Assembly must consult such organisations as it thinks fit that appear to it to represent persons providing pharmaceutical services and such organisations as it thinks fit that appear to it to represent Local Health Boards, 25
  - (c) in a subsection (5)(b) case, the Local Health Board must undertake any consultation required by the directions. 30
- (7) The Assembly must publish in such manner as it thinks fit any fee it determines and any directions it gives under this section.
- (8) In a subsection (5)(b) case, the Local Health Board must publish in such manner as it thinks fit the fee which it determines.”
- (2) In section 126 of that Act (orders and regulations, and directions), in subsection (4), before “to give directions” insert “or by section 42A or 42B above,”. 35

#### **32 Applications for provision of pharmaceutical services**

In section 42 of the 1977 Act (regulations as to pharmaceutical services), after subsection (2A) insert –

- “(2B) The regulations may include the provision mentioned in subsection (2C) for the case where – 40
- (a) two or more applications referred to in subsection (2)(c)(i) or (ii) relate to the same neighbourhood,
  - (b) they are considered together by the Primary Care Trust or the National Assembly for Wales, and 45

- (c) the Primary Care Trust or the Assembly would be satisfied as mentioned in subsection (2)(c) in relation to each application taken on its own, but are not so satisfied in relation to all of them taken together.
- (2C) The provision mentioned in subsection (2B) is provision for the Primary Care Trust or the Assembly, in determining which application (or applications) to grant, to take into account any proposals specified in the applications in relation to the sale or supply at the premises in question, otherwise than by way of pharmaceutical services or in accordance with a private prescription, of—
- (a) drugs and medicines, and
  - (b) other products for, or advice in relation to, the prevention, diagnosis, monitoring or treatment of illness or handicap, or the promotion or protection of health.”
- 33 Arrangements for dispensing of medicines** 15
- In section 43 of the 1977 Act (persons authorised to provide pharmaceutical services), for subsection (2) substitute—
- “(2) Except as may be provided for by or under regulations, no arrangements for the dispensing of medicines shall be made under this Part of this Act with persons other than persons who—
- (a) are registered pharmacists or persons lawfully conducting a retail pharmacy business in accordance with section 69 of the Medicines Act 1968; and
  - (b) undertake that all medicines supplied by them under the arrangements will be dispensed either by or under the supervision of a registered pharmacist.”
- 20  
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## CHAPTER 2

### OPHTHALMIC SERVICES

- 34 Provision of primary ophthalmic services**
- After section 16CC of the 1977 Act insert—
- “16CD Primary ophthalmic services**
- (1) Each Primary Care Trust must exercise its powers so as to provide or secure the provision, within its area, of the following primary ophthalmic services—
- (a) the sight-testing service mentioned in subsection (2),
  - (b) such other primary ophthalmic services as may be prescribed, and
  - (c) to the extent that it considers necessary to meet all reasonable requirements, any further primary ophthalmic services.
- (2) The sight-testing service mentioned in subsection (1)(a) is a service for testing the sight of all of the following persons (except any such testing which takes place in prescribed circumstances)—
- (a) those aged under 16,
- 30  
35  
40

- (b) those aged 16, 17 or 18 who are receiving qualifying full-time education,
  - (c) those whose resources are to be treated in accordance with regulations as being less than or equal to their requirements,
  - (d) those aged 60 or over, 5
  - (e) those of such other description as may be prescribed.
- (3) Regulations may –
  - (a) prescribe what “qualifying full-time education” is for the purposes of subsection (2)(b),
  - (b) make provision for the purposes of subsection (2)(c) about how a person’s resources and requirements are to be calculated. 10
- (4) A Primary Care Trust may (in addition to any other power conferred on it) –
  - (a) provide primary ophthalmic services itself (whether within or outside its area); 15
  - (b) make such arrangements for their provision (whether within or outside its area) as it thinks fit, and may in particular make contractual arrangements with any person.
- (5) Each Primary Care Trust must publish information about such matters as may be prescribed in relation to the primary ophthalmic services provided under this Part. 20
- (6) A body on which functions are conferred under this section must co-operate with any other such body in the discharge of their respective functions relating to the provision of primary ophthalmic services under this Part. 25
- (7) Regulations may provide that services of a prescribed description are, or are not, to be regarded as primary ophthalmic services for the purposes of this Part (but these regulations may not affect the duty in subsection (1)(a)).
- (8) Regulations under subsection (7) may in particular describe services by reference to the manner or circumstances in which they are provided. 30
- (9) Regulations may provide that a person –
  - (a) whose sight is tested by a person who is a party to a general ophthalmic services contract; and
  - (b) who is shown during the testing or within a prescribed time after it to fall within any of paragraphs (a) to (d) of subsection (2), 35is to be taken for the purposes of the testing to have so fallen immediately before his sight was tested.
- (10) In the case mentioned in subsection (9), the testing of his sight is (unless it took place in circumstances prescribed under subsection (2)) to be treated as a testing under the sight-testing service mentioned in subsection (1)(a) – 40
  - (a) for the purposes of remuneration in respect of the testing; and
  - (b) for any such other purpose as may be prescribed. 45

### 16CE Regulations under section 16CD: supplementary

- |   |    |
|---|----|
| (1) Regulations under section 16CD which refer to an Act of Parliament or an instrument made under an Act of Parliament may direct that the reference is to be construed as a reference to that Act or instrument –   | 5  |
| (a) as it has effect at the time when the regulations are made; or  |    |
| (b) both as it has effect at that time and as amended subsequently.   |    |
| (2) Descriptions of persons may be prescribed under section 16CD(2)(e) by reference to any criterion, including the following –   |    |
| (a) their age;  |    |
| (b) the fact that a prescribed person or a prescribed body accepts them as suffering from a prescribed medical condition;   | 10 |
| (c) the fact that a prescribed person or a prescribed body accepts that a prescribed medical condition from which they suffer arose in prescribed circumstances;  |    |
| (d) their receipt of benefit in money or kind under any enactment or their entitlement to receive any such benefit;   | 15 |
| (e) the receipt of any such benefit by other persons satisfying prescribed conditions or the entitlement of other persons satisfying prescribed conditions to receive such benefits.  |    |
| (3) Regulations under section 16CD(3)(b) may direct that a person’s resources and requirements be calculated –  | 20 |
| (a) by a method set out in the regulations;   |    |
| (b) by a method described by reference to a method of calculating or estimating income or capital specified in an enactment other than this section or in an instrument made under an Act of Parliament or by reference to such a method but subject to prescribed modifications; | 25 |
| (c) by reference to an amount applicable for the purposes of a payment under an Act of Parliament or an instrument made under an Act of Parliament; or  | 30 |
| (d) by reference to the person’s being or having been entitled to payment under an Act of Parliament or an instrument made under an Act of Parliament.”   |    |

### 35 General ophthalmic services contracts

After section 28W of the 1977 Act insert – 35

*“General ophthalmic services contracts*

#### 28WA General ophthalmic services contracts: introductory

- |   |    |
|---|----|
| (1) A Primary Care Trust may enter into a contract under which primary ophthalmic services are provided in accordance with the following provisions of this Part. | 40 |
| (2) A contract under this section is called in this Act a “general ophthalmic services contract”.   |    |
| (3) Subject to any provision made by or under this Part, a general ophthalmic services contract may make such provision as may be                                 |    |

agreed between the Primary Care Trust and the contractor or contractors in relation to—

- (a) the services to be provided under the contract,
  - (b) remuneration under the contract, and
  - (c) any other matters. 5
- (4) The services to be provided under a general ophthalmic services contract may include—
- (a) services which are not primary ophthalmic services;
  - (b) services to be provided outside the area of the Primary Care Trust. 10
- (5) In this Part, “contractor”, in relation to a general ophthalmic services contract, means any person entering into the contract with the Primary Care Trust.

**28WB Persons eligible to enter into GOS contracts**

- (1) A Primary Care Trust may, subject to such conditions and exceptions as may be prescribed, enter into a general ophthalmic services contract with any person. 15
- (2) But it may not enter into such a contract with a person who has been disqualified from doing so by an order of disqualification made by virtue of regulations under section 28WC. 20

**28WC Exclusion of contractors**

- (1) The Secretary of State may make regulations conferring on a Primary Care Trust, or another prescribed person, a right to apply to the FHSAA in prescribed circumstances for an order that a person (“P”) be disqualified from entering into a general ophthalmic services contract. 25
- (2) The regulations may in particular provide for—
- (a) the review by the FHSAA of an order of disqualification made by virtue of regulations under this section;
  - (b) what is to happen in relation to general ophthalmic services contracts to which P is a party when the order is made. 30

**28WD GOS contracts: payments**

- (1) The Secretary of State may give directions as to payments to be made under general ophthalmic services contracts.
- (2) A general ophthalmic services contract must require payments to be made under the contract in accordance with directions for the time being in force under this section. 35
- (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; 40
  - (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 only if it is satisfied as to certain conditions); 5
- (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 Secretary of State – 10
- (a) must consult any body appearing to him to be representative of persons to whose remuneration the direction would relate, and
- (b) may consult such other persons as he thinks appropriate.
- (5) Section 18(1) and (3)(b) apply in relation to directions under this section. 15
- (6) References in this section to payments include fees, allowances, reimbursements, loans and repayments.
- 28WE GOS contracts: other required terms**
- (1) A general ophthalmic services contract must contain such provision as may be prescribed (in addition to the provision required by the preceding provisions of this Part). 20
- (2) Regulations under subsection (1) may in particular make provision as to – 25
- (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); 30
- (f) the circumstances in which, and the manner in which, the contract may be terminated;
- (g) enforcement;
- (h) the adjudication of disputes. 35
- (3) Regulations under subsection (2)(d) may –
- (a) make provision as to the circumstances in which a Primary Care Trust may impose a variation of contract terms;
- (b) make provision as to the suspension or termination of any duty under the contract to provide services of a prescribed description. 40
- (4) Regulations making provision of the kind described in subsection (3)(b) may prescribe services by reference to the manner or circumstances in which they are provided.
- (5) Regulations under subsection (1) must make provision as to the right of persons to whom services are to be provided to choose the persons from whom they are to receive them. 45

**28WF GOS contracts: disputes and enforcement**

- (1) Regulations may make provision for the resolution of disputes as to the terms of a proposed general ophthalmic services contract.
- (2) Regulations under subsection (1) may make provision –
  - (a) for the referral of the terms of the proposed contract to the Secretary of State; and
  - (b) for the Secretary of State, or a person appointed by him, to determine the terms on which the contract may be entered into.
- (3) Regulations may make provision for a person or persons entering into a general ophthalmic services contract to be regarded, in circumstances where he or they so elect, as a health service body for the purposes of section 4 of the National Health Service and Community Care Act 1990, but only so far as concerns the general ophthalmic services contract (and not for any other purpose).
- (4) Regulations under subsection (3) may include provision as to the application of section 4 of that Act in cases where –
  - (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 –
  - (a) by virtue of regulations under subsection (3), subsection (7) of section 4 of that Act applies in relation to a general ophthalmic services contract, and
  - (b) a direction as to payments is made under that provision in relation to the contract,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.”

**36 Persons performing primary ophthalmic services**

- (1) Section 28X of the 1977 Act (persons performing primary medical and dental services) is amended as follows.
- (2) After subsection (2) insert –

“(2A) Regulations may provide that a health care professional of a prescribed description may not perform any primary ophthalmic service for which a Primary Care Trust is responsible unless he is included in a list maintained under the regulations by a Primary Care Trust.”
- (3) In subsection (3)(b), for “medical or dental” substitute “medical, dental or ophthalmic”.
- (4) After subsection (6) insert –

“(6A) Regulations under this section may, in particular, also prescribe the qualifications and experience which a medical practitioner who applies for inclusion in a list mentioned in subsection (2A) must have, and may –

  - (a) provide for the practitioner to show to the satisfaction of a committee recognised by the Secretary of State for the purpose that he possesses such qualifications and experience;

- 
- (b) confer on a person who is dissatisfied with the determination of such a committee a right of appeal to a committee appointed by the Secretary of State; and
- (c) provide for anything which appears to the Secretary of State to be appropriate in connection with that right of appeal.” 5
- (5) In the heading, for “medical and dental” substitute “medical, dental and ophthalmic”.
- 37 Assistance and support**
- (1) Section 28Y of the 1977 Act (assistance and support for providers of primary medical and dental services) is amended as follows. 10
- (2) For paragraph (a) of subsection (1) substitute—
- “(a) any person providing, or proposing to provide, primary medical services under a general medical services contract, primary dental services under a general dental services contract, or primary ophthalmic services under a general ophthalmic services contract;” 15
- (3) In paragraph (b) of subsection (1), for “such services” substitute “primary medical or dental services”.
- 38 Local Optical Committees**
- After section 45B of the 1977 Act insert— 20
- “45C Local Optical Committees: England**
- (1) A Primary Care Trust may recognise a committee formed for its area, or for its area and that of one or more other Primary Care Trusts, which it is satisfied is representative of—
- (a) the persons to whom subsection (2) applies; and 25
- (b) the persons to whom subsection (3) applies.
- (2) This subsection applies to every person who, under a general ophthalmic services contract entered into by him, is providing primary ophthalmic services in the area for which the committee is formed.
- (3) This subsection applies to every optometrist not falling within subsection (2)— 30
- (a) who is performing primary ophthalmic services in the area for which the committee is formed, whether under section 16CD(4)(a) above, or under a general ophthalmic services contract, and 35
- (b) who has notified the Primary Care Trust that he wishes to be represented by the committee (and has not notified it that he wishes to cease to be so represented).
- (4) A committee recognised under this section shall be called the Local Optical Committee for the area for which it is formed. 40
- (5) Any such committee may delegate any of its functions, with or without restrictions or conditions, to sub-committees composed of members of that committee.



- (6) Any such committee may co-opt persons not falling within subsection (2) or (3) on such terms as it thinks fit.
- (7) Regulations may require a Primary Care Trust, in the exercise of its functions relating to primary ophthalmic services, to consult any committee recognised by it under this section on such occasions and to such extent as may be prescribed. 5
- (8) A committee recognised under this section shall have such other functions as may be prescribed.
- (9) A committee recognised under this section shall in respect of each year determine – 10
  - (a) the amount of its administrative expenses for that year attributable to persons of whom it is representative under subsection (1)(a); and
  - (b) the amount of its administrative expenses for that year attributable to persons of whom it is representative under subsection (1)(b). 15
- (10) A Primary Care Trust may –
  - (a) on the request of a committee recognised by it, allot to that committee such sums as it may determine for defraying the expenses referred to in subsection (9)(a), together with a reasonable proportion of the committee’s administrative expenses attributable to any co-opted members; and 20
  - (b) deduct the amount of such sums from the remuneration of persons of whom it is representative under subsection (1)(a) under the general ophthalmic services contracts entered into by them with the Trust. 25
- (11) A committee recognised under this section shall apportion the amount determined by it under subsection (9)(b), together with the remainder of the committee’s administrative expenses attributable to any co-opted members, among the persons of whom it is representative under subsection (1)(b); and each such person shall pay in accordance with the committee’s directions the amount so apportioned to him. 30
- (12) References in this section to the administrative expenses of a committee include the travelling and subsistence allowances payable to its members.” 35

### 39 Payments in respect of optical appliances

- (1) Schedule 12 to the 1977 Act (which makes provision about charges and payments) is amended as follows.
- (2) In paragraph 2A(1) –
  - (a) for paragraph (b) substitute – 40
    - “(b) for a person whose resources fall to be treated under the regulations as being less than or equal to his requirements;
    - (ba) for any person falling within section 16CD(2)(d) above; or”, 45
  - (b) after “paragraph (a), (b)” insert “, (ba)”.

(3) After paragraph 2A insert –

- “2B (1) Regulations under paragraph 2A above providing for payments for meeting or contributing towards the cost incurred for the supply of optical appliances or their replacement or repair may also provide as follows, but in relation to England only. 5
- (2) They may make provision for such payments not to be made to any person falling within a prescribed description.
- (3) They may make provision for the Secretary of State to give notice as mentioned in sub-paragraph (4) to a person to whom such payments have been made (whether by the Secretary of State or by an authority established under this Act). 10
- (4) Such a notice is notice that no further such payments in respect of the supply, replacement or repair of optical appliances at a particular location or in a particular area, in either case specified in the notice, will be made to him after a date specified in the notice. 15
- (5) If such a notice is given, no further payments as mentioned in sub-paragraph (4) are to be made to him after the date specified in the notice, unless the notice is cancelled by the Secretary of State.
- (6) The regulations may make provision conferring on the Secretary of State the right, if he has given a notice by virtue of sub-paragraph (3), to apply to the FHSAA for a stop order. 20
- (7) A stop order is an order that no further such payments are to be made (whether by the Secretary of State or by any authority established under this Act) to the person in question in respect of the supply, replacement or repair of optical appliances, wherever the supply, replacement or repair occurred. 25
- (8) If the regulations make the provision mentioned in sub-paragraph (3), they must also make provision conferring prescribed rights of appeal to the FHSAA upon the person to whom the notice was given.” 30

**40 General ophthalmic services: transitional**

- (1) The Secretary of State shall in regulations make transitional provision in respect of persons who, immediately before the coming into force of section 35, are providing services in England under section 38 of the 1977 Act (general ophthalmic services). 35
- (2) Regulations under this section may provide that, in such circumstances as the regulations may specify, a Primary Care Trust must, if any such person so wishes, enter into a general ophthalmic services contract with him; and the regulations may make provision as to the terms of any such contract.
- (3) Regulations under this section may provide that, in such circumstances as the regulations may specify, a Primary Care Trust must, if any such person so wishes, enter into a contract with him, containing such terms as the regulations may specify, for the provision of ophthalmic services. 40
- (4) Regulations under this section may make provision for the resolution of disputes in relation to any contract entered into, or proposed to be entered into, 45

under subsection (2) or (3), including provision for the determination of disputes by the Secretary of State or a person appointed by him.

- (5) Regulations under this section may make provision in respect of a period beginning before the coming into force of the provision (or of section 35), but such provision must not as a whole be detrimental to the remuneration of the persons to whom it relates. 5
- (6) In this section, “general ophthalmic services contract” means a contract under section 28WA of the 1977 Act (as inserted by section 35(1)).

### CHAPTER 3

#### PROTECTION OF NHS FROM FRAUD AND OTHER UNLAWFUL ACTIVITIES 10

##### *Preliminary*

#### **41 Compulsory disclosure of documents for purposes of counter fraud or security management functions**

- (1) This Chapter confers power to require the production of documents in connection with the exercise of – 15
- (a) the appropriate national authority’s counter fraud functions in relation to the health service in England or (as the case may be) Wales, or
  - (b) the Secretary of State’s security management functions in relation to the health service in England.
- (2) The appropriate national authority’s “counter fraud functions” in relation to the health service in England or Wales means that authority’s power (by virtue of section 2(b) of the 1977 Act) to take action for the purpose of preventing, detecting or investigating fraud, corruption or other unlawful activities carried out against or otherwise affecting – 20
- (a) the health service in England or (as the case may be) Wales, or 25
  - (b) that authority in relation to the authority’s responsibilities for the health service in England or (as the case may be) Wales.
- (3) The Secretary of State’s “security management functions” in relation to the health service in England means the Secretary of State’s power (by virtue of section 2(b) of the 1977 Act) to take action for the purpose of protecting and improving the security of – 30
- (a) persons employed by the Secretary of State or an NHS body in the provision of services for the purposes of the health service in England (“English NHS services”);
  - (b) health service providers and persons employed by them so far as they or (as the case may be) persons so employed are engaged in any activity directly related to the provision of English NHS services; 35
  - (c) NHS contractors and persons employed by them so far as they or (as the case may be) persons so employed are engaged in any activity directly related to the provision of English NHS services; 40
  - (d) persons not within paragraphs (a) to (c) who work in any capacity on premises used by the Secretary of State, an NHS body, a health service provider, or an NHS contractor, in connection with the provision of English NHS services;
  - (e) persons on such premises – 45

- 
- (i) who are there for the purpose of receiving, or are receiving or have received, treatment or other services as patients, or
    - (ii) who are accompanying persons within sub-paragraph (i);
  - (f) property and information used or held by the Secretary of State, an NHS body, a health service provider, or an NHS contractor, in connection with the provision of English NHS services. 5
- (4) In this Chapter –
- (a) the appropriate national authority’s counter fraud functions in relation to the health service in England or (as the case may be) Wales, and
  - (b) the Secretary of State’s security management functions in relation to the health service in England, 10
- are collectively referred to as functions to which this Chapter applies.
- (5) In this section “investigating” means investigating in relation to civil or criminal proceedings.
- 42 Meaning of “NHS body” etc. 15**
- (1) This section applies for the purposes of this Chapter.
- (2) Subject to subsection (3), an “NHS body” means –
- (a) a Strategic Health Authority,
  - (b) a Local Health Board,
  - (c) a Special Health Authority, 20
  - (d) a Primary Care Trust,
  - (e) an NHS trust, or
  - (f) an NHS foundation trust.
- (3) In section 41(3), and in section 43(1) so far as having effect in relation to the Secretary of State’s security management functions referred to in section 41(3), an “NHS body” means – 25
- (a) a Strategic Health Authority,
  - (b) a Special Health Authority so far as performing functions in respect of England,
  - (c) a Primary Care Trust, 30
  - (d) an NHS trust all or most of whose hospitals, establishments and facilities are situated in England, or
  - (e) an NHS foundation trust.
- (4) A “health service provider” means any person (other than a body within subsection (2)) providing primary medical services, primary dental services, primary or general ophthalmic services, or pharmaceutical services. 35
- (5) An “NHS contractor” means any person (other than a body or person within subsection (2) or (4)) providing services of any description under arrangements made with an NHS body.
- (6) A “statutory health body” means any body (other than a body within subsection (2), (4) or (5)) established by or under an enactment and – 40
- (a) providing services in connection with the provision of, or
  - (b) exercising functions in relation to,
- the health service in either England or Wales or both.

- (7) The appropriate national authority may by order –
  - (a) make such amendments of any of subsections (2) to (6) as the authority considers appropriate;
  - (b) make such consequential amendments of this Chapter as the authority considers appropriate.

5

*Disclosure notices*

**43 Notice requiring production of documents**

- (1) This section applies if it appears to the appropriate national authority that there are reasonable grounds for suspecting –
  - (a) that any documents containing information relevant to the exercise of any of the authority’s functions to which this Chapter applies are in the possession or under the control of any NHS body, statutory health body, health service provider or NHS contractor (“the relevant organisation”), and 10
  - (b) that a person within subsection (3) is accountable for the documents. 15
- (2) The appropriate national authority may serve on that person a notice requiring him to produce the documents to an authorised officer.
- (3) The persons within this subsection are –
  - (a) any member, officer or director of the relevant organisation;
  - (b) any other person who takes part in the management of the affairs of that organisation; 20
  - (c) any person employed by that organisation; and
  - (d) (in the case of a health service provider or NHS contractor who is an individual) that individual.
- (4) A notice under this section must specify or describe the documents to which it relates. 25
- (5) Subject to subsections (6) and (7), the notice may require those documents to be produced –
  - (a) at or by such time as is specified in the notice, or at once, and
  - (b) at such place, and in such manner, as is so specified. 30
- (6) When specifying a time at or by which the documents are to be produced, the notice must not require them to be produced otherwise than at a reasonable hour.
- (7) If the notice requires documents to be produced at once, it may only be served at a reasonable hour. 35
- (8) An authorised officer may, by agreement with the person served with a notice within subsection (6) or (7), vary the notice so as to extend the time for compliance with it.
- (9) Any notice under this section, and any variation of such a notice under subsection (8), must be in writing. 40
- (10) For the purposes of this section an individual is “accountable” for any documents if he has either day-to-day, or an overall, responsibility for the custody or control of the documents.

#### 44 Production of documents

- (1) This section applies where a notice has been served under section 43.
- (2) An authorised officer may –
- (a) take away any documents produced in compliance with the notice;
  - (b) take copies of or extracts from any documents so produced; 5
  - (c) require the person producing any such documents to provide an explanation of any of them.
- (3) If –
- (a) the officer takes away any such document, and
  - (b) the person producing it requests the officer to provide him with a copy of it, and 10
  - (c) the request appears to the officer to be reasonable in the circumstances, the officer must, as soon as is reasonably practicable, provide that person with a copy of the document (in such form as the officer considers appropriate).
- (4) Documents produced in compliance with a notice under section 43 may be retained for so long as the appropriate national authority considers that it is necessary to retain them (rather than copies of them) in connection with the exercise of any function of the authority to which this Chapter applies. 15
- (5) If the appropriate national authority has reasonable grounds for believing –
- (a) that any such documents may have to be produced for the purposes of any legal proceedings, and 20
  - (b) that they might otherwise be unavailable for those purposes, they may be retained until the proceedings are concluded.
- (6) If a person who is required by a notice under section 43 to produce any documents does not produce the documents in compliance with the notice, an authorised officer may require that person to state, to the best of his knowledge and belief, where they are. 25
- (7) A person is not bound to comply with any requirement imposed by a notice under section 43 or any requirement under subsection (6) unless evidence of authority is given – 30
- (a) at the time when the notice is served, or
  - (b) at the time when the requirement is imposed under subsection (6), as the case may be.
- (8) In addition, a person may not be required under section 43 or subsection (6) to produce any document or disclose any information which he would be entitled to refuse to produce or disclose in proceedings in the High Court on grounds of legal professional privilege. 35

#### 45 Delegation of functions

- (1) The appropriate national authority may direct a Special Health Authority to exercise so much of the appropriate national authority’s functions under sections 43 and 44 as is specified in the directions (“the delegated functions”). 40
- (2) The appropriate national authority may give directions providing for senior officers of the Authority to exercise the delegated functions on behalf of the Authority.
- “Senior officer” means an officer of or above a level specified in the directions. 45

- (3) Any directions under subsection (1) or (2) must be given in regulations.
- (4) The appropriate national authority may by regulations make such provision as the authority considers appropriate in connection with the exercise of the delegated functions.
- (5) The regulations may, in particular, make provision— 5
  - (a) specifying conditions as to training that must be satisfied in relation to officers of the Authority involved in the exercise of the delegated functions;
  - (b) for requiring officers to obtain specific authorisation before the delegated functions are exercised in relation to personal records; 10
  - (c) providing for the designation of officers for the purpose of giving such authorisations;
  - (d) otherwise prescribing the manner in which the delegated functions may be exercised.
- (6) If the appropriate national authority gives a direction under subsection (1), the 1977 Act has effect as if— 15
  - (a) the direction is a direction of the authority under section 16D of that Act; and
  - (b) the delegated functions are exercisable by the Special Health Authority under section 16D. 20

#### **46 Code of practice relating to delegated functions**

- (1) The appropriate national authority may issue a code of practice relating to the exercise of functions by or on behalf of a Special Health Authority by virtue of directions under section 45.
- (2) The appropriate national authority must keep the code under review and may from time to time— 25
  - (a) revise the whole or any part of the code, and
  - (b) issue a revised code.
- (3) Where the appropriate national authority proposes to issue a code of practice under this section, the authority must— 30
  - (a) prepare a draft of the code, and
  - (b) consult such persons as the authority considers appropriate about the draft.
- (4) Where the appropriate national authority proposes to issue a revised code under this section which in the opinion of the authority would result in a substantial change in the code, the authority must— 35
  - (a) prepare a draft of the revised code, and
  - (b) consult such persons as that authority considers appropriate about the change.
- (5) Where, following consultation under subsection (3) or (4), the appropriate national authority issues the code or revised code (whether in the form of the draft or with such modifications as the authority thinks fit), it comes into force at the time when it is issued by the authority. 40
- (6) A failure to observe any provision of a code or revised code issued under this section does not of itself make a person liable to any criminal or civil proceedings. 45

- (7) A code or revised code issued under this section is admissible in evidence in any criminal or civil proceedings.
- (8) Consultation undertaken by the appropriate national authority before the commencement of this section is as effective for the purposes of this section as consultation undertaken after that time. 5

#### 47 Disclosure of information

- (1) This section applies to information which—  
 (a) is held by or on behalf of the appropriate national authority, and  
 (b) was obtained by virtue of section 43 or 44.
- (2) The information must not be disclosed except in accordance with subsection (3). 10
- (3) A disclosure is made in accordance with this subsection if it is made—  
 (a) for the purposes of the exercise of any of the appropriate national authority’s functions in relation to the health service in England or (as the case may be) Wales, 15  
 (b) for the purposes of any civil proceedings brought in the exercise of any of those functions,  
 (c) for the purposes of any criminal investigation or proceedings,  
 (d) for the purposes of any relevant disciplinary proceedings, or  
 (e) in accordance with an enactment or order of a court. 20
- (4) In subsection (3)—  
 (a) paragraphs (a) and (b) apply whether or not the appropriate national authority concerned is the one mentioned in subsection (1), and  
 (b) “relevant disciplinary proceedings” means disciplinary proceedings conducted in relation to an individual by— 25  
 (i) an NHS body, statutory health body or health service provider, or  
 (ii) any of the regulatory bodies mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002 (c.17) (bodies within remit of Council for the Regulation of Health Care Professionals). 30
- (5) Where information to which this section applies is disclosed to any person in accordance with subsection (3), the information must not be used or further disclosed by that person except for a purpose connected with— 35  
 (a) the functions or proceedings for the purposes of which it was disclosed, or  
 (b) the purposes of the enactment or order in accordance with which it was disclosed,  
 as the case may be.
- (6) Information to which this section applies may be disclosed in accordance with subsection (3) despite any obligation of confidence that would otherwise prohibit or restrict the disclosure. 40
- (7) This section does not prohibit any disclosure or use of information relating to a particular person if it is made with the consent of that person.



#### **48 Special protection for personal records**

- (1) This section applies to information—
  - (a) which is obtained from personal records produced in compliance with a notice under section 43, and
  - (b) from which the identity of the individual in question can be ascertained. 5
- (2) Subsection (1)(b) is satisfied if the identity of the individual can be ascertained either—
  - (a) from the information itself, or
  - (b) from that information taken with other information obtained by virtue of section 43 or 44 and disclosed by or on behalf of the appropriate national authority. 10
- (3) Any person who, in accordance with section 47(3), discloses the information for the purposes of any proceedings must take such measures as are necessary to ensure that the information is not disclosed to any member of the public except in accordance with an order of the court under subsection (5). 15
- (4) A party to the proceedings may apply to the court for permission to adduce the information as evidence in the proceedings.
- (5) If the court is satisfied on such an application that it is necessary in the interests of justice for the information to be so adduced, it may grant permission on such terms as it thinks fit. 20
- (6) Those terms may include a direction requiring the whole or part of the proceedings to be held otherwise than in open court.

#### *Offences*

#### **49 Offences in connection with production of documents** 25

- (1) A person commits an offence if, without reasonable excuse, he fails to comply with any requirement imposed on him under section 43 or 44.
- (2) A person guilty of an offence under subsection (1) is liable on summary conviction—
  - (a) to imprisonment for a term not exceeding 51 weeks, or
  - (b) to a fine not exceeding level 3 on the standard scale, or to both. 30
- (3) If a person is convicted of an offence under subsection (1) in respect of a failure to produce a document and the failure continues after the date of his conviction, the person—
  - (a) commits a further offence, and
  - (b) is liable on summary conviction to a fine not exceeding 2% of level 3 on the standard scale for each day on which the failure so continues. 35
- (4) A person commits an offence if, in purported compliance with any requirement imposed on him under section 44—
  - (a) he makes a statement which is false or misleading, and
  - (b) he either knows that it is false or misleading or is reckless as to whether it is false or misleading. 40

“False or misleading” means false or misleading in a material particular.

- (5) A person guilty of an offence under subsection (4) is liable –
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both;
  - (b) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum, or to both. 5

## 50 Offences relating to disclosure or use of information

- (1) A person commits an offence if he fails to comply with section 47(2) or (5) or section 48(3).
- (2) A person guilty of an offence under subsection (1) is liable – 10
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both;
  - (b) on summary conviction to imprisonment for a term not exceeding 51 weeks or to a fine not exceeding the statutory maximum, or to both.
- (3) It is a defence for a person charged with an offence under subsection (1) in respect of a disclosure of information to prove that at the time of the alleged offence – 15
- (a) any of the circumstances in subsection (4) applied, or
  - (b) he reasonably believed that they applied.
- (4) The circumstances referred to in subsection (3) are – 20
- (a) that the disclosure was lawful,
  - (b) that the information had already been lawfully made available to the public,
  - (c) that the disclosure was necessary or expedient for the purpose of protecting the welfare of any individual, 25
  - (d) that the disclosure was made in a form in which no person to whom the information relates is identified.
- (5) Subsection (4)(d) is not satisfied if the identity of any such person can be ascertained either – 30
- (a) from the information itself, or
  - (b) from that information taken with other information obtained by virtue of section 43 or 44 and disclosed by or on behalf of the appropriate national authority.

### *Supplementary*

## 51 Manner in which disclosure notice may be served 35

- (1) This section provides for the manner in which a notice may be served under section 43.
- (2) The notice may be served on a person by –
- (a) delivering it to him;
  - (b) leaving it at his proper address; 40
  - (c) sending it by post to him at that address.

- (3) For the purposes of this section and section 7 of the Interpretation Act 1978 (c. 30) (service of documents by post) in its application to this section, the proper address of a person is his usual or last-known address (whether residential or otherwise), except that—
- (a) in the case of a notice to be served on the secretary, clerk or similar officer of a body corporate, it is the address of the registered office of that body or its principal office in the United Kingdom, 5
  - (b) in the case of a notice to be served on a partner or a person having the control or management of a partnership business, it is the address of the principal office of the partnership in the United Kingdom, and 10
  - (c) in the case of a notice to be served on an officer of an unincorporated association (other than a partnership), it is the address of the principal office of the association in the United Kingdom.

## 52 Interpretation

- (1) In this Chapter— 15
- “authorised officer”, in relation to any function, means (subject to subsection (5)) an officer of the appropriate national authority authorised by the authority to act in exercise of the function;
  - “document” means anything in which information of any description is recorded; 20
  - “employed” means employed whether under a contract of service or a contract for services or otherwise, and whether for remuneration or not;
  - “functions to which this Chapter applies” has the meaning given by section 41(4);
  - “health service provider”, “NHS body” and “NHS contractor” have the meanings given by section 42; 25
  - “personal records” has the meaning given by section 12 of the Police and Criminal Evidence Act 1984 (c. 60);
  - “statutory health body” has the meaning given by section 42.
- (2) Other expressions used in this Chapter which are also used in the 1977 Act have the same meanings as in that Act. 30
- (3) References in this Chapter to the provision of services—
- (a) in relation to statutory health bodies, health service providers or NHS contractors, include references to the provision of goods or facilities, and 35
  - (b) include references to the provision of services (or goods or facilities) wherever that takes place.
- (4) In relation to information recorded otherwise than in legible form, any reference in this Chapter to the production of documents is a reference to the production of a copy of the information in legible form. 40
- (5) Where functions of the appropriate national authority are exercisable by a Special Health Authority by virtue of directions under section 45—
- (a) references in this Chapter to authorised officers include officers of the Special Health Authority authorised by or on behalf of the Authority to act in exercise of the functions, and 45
  - (b) references in this Chapter to information held or disclosed by or on behalf of the appropriate national authority include information held or disclosed by or on behalf of the Special Health Authority.

## CHAPTER 4

### AUDIT

#### 53 Accounts and audit

- (1) For section 98 of the 1977 Act substitute –

**“98 Accounts and audit** 5

Schedule 12B to this Act makes provision about the accounts of certain health service bodies and the auditing of such accounts.”

- (2) After Schedule 12A to that Act insert, as Schedule 12B, the Schedule set out in Schedule 3 to this Act.

### PART 5 10

#### APPOINTMENTS COMMISSION

##### *The Appointments Commission*

#### 54 The Appointments Commission

- (1) There is to be a body corporate known as the Appointments Commission.
- (2) The Commission is to have the functions conferred on it by or under this or any other Act. 15
- (3) Schedule 4 makes further provision about the Commission.
- (4) The National Health Service Appointments Commission is abolished on the appointed day.
- (5) “The appointed day” means the day appointed under section 79 for the coming into force of subsection (4). 20

##### *Delegation of appointment functions*

#### 55 Commission to exercise Secretary of State’s appointment functions

- (1) The Commission is to exercise so much of any function of the Secretary of State relating to the appointment of any persons within subsection (2), (3) or (4) as may be specified in a direction given by the Secretary of State. 25
- (2) The persons within this subsection are –
- (a) chairmen and non-executive members of Strategic Health Authorities, Primary Care Trusts, NHS trusts or Special Health Authorities;
  - (b) trustees for NHS trusts or Primary Care Trusts; and 30
  - (c) special trustees to which section 95 of the 1977 Act applies (special trustees for university and teaching hospitals).
- (3) The persons within this subsection are chairmen and non-executive members of any of the statutory bodies listed in Schedule 5.

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- (4) The persons within this subsection are chairmen and non-executive members of any other body (however established) which has functions relating to –
- (a) health,
  - (b) social care, or
  - (c) the regulation of professions associated with health or social care. 5
- (5) For the purposes of subsection (4) it is immaterial –
- (a) that a body has functions relating to matters other than those specified in that subsection, or
  - (b) that the body’s functions are not exercisable only in relation to England.
- 56 Cases where appointment functions exercisable jointly etc. 10**
- (1) This section applies if a function of the Secretary of State relating to the appointment of any persons within section 55(2), (3) or (4) is exercisable by the Secretary of State jointly or concurrently with –
- (a) a devolved authority, or
  - (b) any other person who is not a Minister of the Crown. 15
- (2) A requirement to exercise the function jointly or concurrently does not prevent the Secretary of State from giving a direction under section 55 in respect of the function, but he must not do so unless he first consults the devolved authority or other person.
- (3) If the Secretary of State gives such a direction, so much of the functions of the Secretary of State and the devolved authority or other person as is specified in the direction is exercisable by the Commission acting alone. 20
- (4) Subsections (2) and (3) do not apply if the function is exercisable jointly or concurrently with the Scottish Ministers, but the Secretary of State may nevertheless give a direction under section 55 in respect of the exercise of any function that he has. 25
- 57 Commission to exercise Privy Council’s appointment functions**
- (1) The Commission is to exercise so much of any function of the Privy Council relating to the appointment of members to any of the regulatory bodies listed in Schedule 6 as may be specified in a direction given by the Privy Council. 30
- (2) The Commission is to exercise so much of any function of the Privy Council relating to the appointment of members to the Council of the Royal Pharmaceutical Society of Great Britain as may be specified in a direction given by the Privy Council.
- 58 Commission to exercise Assembly’s appointment functions 35**
- The Commission is to exercise so much of any function of the National Assembly for Wales relating to the appointment of members to the Commission for Healthcare Audit and Inspection or the Health Protection Agency as may be specified in a direction given by the Assembly.
- 59 Exercise of appointments functions 40**
- (1) This section applies where any function is exercisable by the Commission in relation to an appointment by virtue of a direction under section 55, 57 or 58.

- (2) Subject to the following provisions of this section, the function is exercisable by the Commission in relation to the appointment in such manner as it thinks fit, having regard to the provisions of any enactment or instrument relating to the making of the appointment (as they have effect in accordance with subsection (3)). 5
- (3) References in any such provisions to things done, or falling to be done, by or in relation to the Secretary of State, the Privy Council or the National Assembly for Wales have effect, so far as necessary in connection with the function being exercisable by the Commission, as references to things done, or falling to be done, by or in relation to the Commission. 10
- (4) The direction mentioned in subsection (1) may contain provisions relating to the manner in which the function is to be exercised.
- (5) Those provisions may, in particular, include provisions relating to—  
 (a) matters to which the Commission is to have regard,  
 (b) any criteria to be used, or 15  
 (c) the procedure to be followed,  
 in relation to making appointments in exercise of the function.
- (6) The Commission must take into account any guidance which—  
 (a) is issued by the Commissioner for Public Appointments or any government department, and 20  
 (b) relates to the making of appointments to public bodies.

*Other functions*

**60 Commission to assist other bodies with appointments**

- (1) The Commission may enter into arrangements under subsection (2) with the board of governors of an NHS foundation trust. 25
- (2) Arrangements under this subsection are arrangements providing for the Commission to assist the board in connection with the exercise of their powers relating to—  
 (a) the appointment of the chairman and non-executive directors under paragraph 17 of Schedule 1 to the 2003 Act; or 30  
 (b) the appointment of the initial chairman and the initial non-executive directors in accordance with paragraph 19 of that Schedule.
- (3) The Commission may enter into arrangements under subsection (4) with—  
 (a) any Minister of the Crown exercising functions in relation to England, or 35  
 (b) any officer acting on behalf of such a Minister.
- (4) Arrangements under this subsection are arrangements providing for the Commission to assist the Minister or officer in connection with the exercise by him of any power relating to—  
 (a) the appointment of the chairman of any body specified in the arrangements, or 40  
 (b) the appointment of non-executive members of such a body.
- (5) For the purposes of subsections (3) and (4) it is immaterial that the body's functions are not exercisable only in relation to England.

- (6) But arrangements may not be entered into under subsection (4) in relation to any powers that are exercisable by a Minister of the Crown jointly or concurrently with, or after consultation with—
- (a) a devolved authority, or
  - (b) any other person who is not a Minister of the Crown. 5
- (7) In this section—
- (a) “arrangements” means arrangements, whether contractual or otherwise;
  - (b) references to assistance in connection with the exercise of any power of appointment do not include the making of any appointment. 10

**61 Functions connected with appointments to bodies to which section 55 or 57 applies**

- (1) The Commission may provide chairmen and non-executive members of relevant bodies with general advice on matters relating to recruitment, selection, appraisal, training or development and conditions of service (including remuneration). 15
- (2) The Commission may provide persons appointed by it to be chairmen and non-executive members of relevant bodies with mentoring and other assistance in relation to the exercise of their functions.
- (3) The Commission may provide chairmen, executive and non-executive members of relevant bodies with training in connection with their respective roles and responsibilities. 20
- (4) Arrangements under section 60(2) or (4) may provide for the Commission to exercise functions corresponding to those in subsection (1), (2) or (3) above in relation to the persons in connection with whose appointments the Commission provides assistance under the arrangements. 25
- (5) In this section “relevant body” means any body in relation to which a direction is in force under section 55 or 57.

**62 Prescribed functions**

- (1) Regulations may make provision for or in connection with conferring functions on the Commission in relation to appointments to applicable bodies and matters relating to such appointments. 30
- (2) The functions which may be so conferred include—
- (a) administering schemes relating to the payment, to chairmen and non-executive members of applicable bodies, of remuneration and allowances falling to be determined by the Secretary of State; 35
  - (b) publishing or otherwise making available information as to the terms and conditions applying to chairmen and non-executive members of applicable bodies, including information as to such remuneration and allowances; 40
  - (c) assisting the Secretary of State in connection with the implementation of decisions as to the payment of such remuneration to such persons;
  - (d) advising the Secretary of State in connection with the payment of such allowances to such persons;

- (e) advising the Secretary of State generally on matters relating to appointments to applicable bodies.
- (3) Nothing in subsection (2) is to be read as prejudicing the generality of subsection (1).

*Functions: supplementary*

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**63 Exercise of functions**

- (1) The Commission must exercise its functions –
  - (a) efficiently and cost-effectively, and
  - (b) in such a way as to ensure the maintenance of public confidence in the making of appointments to public bodies. 10
- (2) In connection with the exercise of its functions the Commission may –
  - (a) engage in or commission research;
  - (b) obtain and analyse data and other information;
  - (c) make available to any body or person such persons, materials and facilities as it may determine; 15
  - (d) provide information, advice and guidance, whether generally or to such bodies or persons as it may determine.
- (3) The information, advice and guidance which may be provided as mentioned in subsection (2)(d) includes –
  - (a) information relating to appointments to applicable bodies, and 20
  - (b) advice and guidance on matters relating to appointments to applicable bodies or the governance of such bodies.
- (4) The Commission may do anything which it thinks is –
  - (a) appropriate for facilitating, or
  - (b) incidental or conducive to, 25
 the exercise of its functions.
- (5) The power under subsection (4) includes power –
  - (a) to enter into contracts;
  - (b) to acquire, and dispose of, land and other property;
  - (c) to form, or participate in the forming of, companies; 30
  - (d) to develop and make available for sale (otherwise than for profit) material for use in connection with appointments to applicable bodies;
  - (e) to provide accommodation.
- (6) The power under subsection (4) is not restricted by subsection (2), but –
  - (a) so far as it relates to functions conferred on the Commission under section 58, is exercisable subject to directions given by the National Assembly for Wales; 35
  - (b) so far as it relates to any other functions of the Commission, is exercisable subject to directions given by the Secretary of State.



*Reports etc.*

**64 Annual reports**

- (1) The Commission must prepare in respect of each financial year a report relating to its performance of its functions during that year.
- (2) The report must in particular – 5
  - (a) set out the practices adopted by the Commission during the year with a view to ensuring equal opportunities,
  - (b) contain information about complaints made to the Commission during the year, and about how complaints made to the Commission were resolved during the year, and 10
  - (c) deal with any such other matters as the Secretary of State may direct.
- (3) The Commission must –
  - (a) send the Secretary of State and the National Assembly for Wales copies of the report as soon as possible after the end of the year, and
  - (b) publish the report in such manner as the Commission considers appropriate. 15
- (4) The Secretary of State must lay before each House of Parliament a copy of every report sent to him under subsection (3).

**65 Other reports and information**

- (1) If requested to do so by – 20
  - (a) the Secretary of State,
  - (b) the Privy Council,
  - (c) a government department, or
  - (d) the Commissioner for Public Appointments,the Commission must provide him or it with such a report or information relating to any aspect of the Commission’s performance of its functions as is specified in the request. 25
- (2) If requested to do so by the National Assembly for Wales, the Commission must provide it with such a report or information relating to any aspect of the Commission’s performance of its functions under section 58 as is specified in the request. 30
- (3) If requested to do so by a body to which this subsection applies, the Commission must provide the body with such a report or information relating to the Commission’s performance of its functions in relation to the body as is specified in the request. 35
- (4) Subsection (3) applies to any body in relation to which –
  - (a) functions are exercisable by the Commission by virtue of a direction under section 55, 57 or 58, or
  - (b) arrangements are in force under section 60.

*Miscellaneous and supplementary***66 Transfer of staff and property etc.**

Schedule 7 makes provision in relation to the transfer to the Appointments Commission of staff, property, rights and liabilities of the National Health Service Appointments Commission. 5

**67 Directions**

- (1) Any direction given by the Secretary of State, the Privy Council or the National Assembly for Wales under this Part—
  - (a) must be given in writing, and
  - (b) may be varied or revoked by a subsequent such direction. 10
- (2) Where a function of the Secretary of State, the Privy Council or the Assembly is exercisable by the Commission by virtue of a direction under this Part, the direction does not preclude the Secretary of State, the Privy Council or the Assembly (as the case may be) from exercising the function.
- (3) Section 126(4) of the 1977 Act (supplementary provisions about subordinate legislation) applies in relation to any power to give directions under this Part as it applies in relation to the powers mentioned in that subsection. 15

**68 Interpretation**

- (1) In this Part—
  - “applicable body” is to be read in accordance with subsections (4) and (5); 20
  - “appointment” is to be read in accordance with subsections (2) and (3);
  - “the Commission” means the Appointments Commission;
  - “devolved authority” is to be read in accordance with subsection (7);
  - “financial year”, in relation to the Commission, means—
    - (a) the period starting on the day the Commission is established and ending with the next 31st March, or
    - (b) any succeeding period of 12 months; 25
  - “Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975 (c. 26);
  - “the National Health Service Appointments Commission” means the Special Health Authority known by that name; 30
  - “NHS bodies” means bodies within section 55(2)(a);
  - “NHS trust” has the same meaning as in the 1977 Act;
  - “non-executive members” is to be read in accordance with subsection (6);
  - “prescribed” means prescribed by regulations; 35
  - “regulations” means regulations made by the Secretary of State.
- (2) In this Part “appointment” includes—
  - (a) any process involving an appointment (whether described as re-appointment or replacement or otherwise) including a temporary appointment; and 40
  - (b) nomination for appointment;
 and also includes removal or suspension from office.

- (3) References in this Part to functions relating to the appointment of a person include functions relating to a person’s tenure of office.
- (4) In this Part “applicable body” means –
- (a) any body in relation to which a direction may be given under section 55, 57 or 58, and 5
  - (b) (except in section 62(2)(a) and (b)) any NHS foundation trust and any body which falls within subsection (5).
- (5) A body falls within this subsection if arrangements providing for the Commission to assist in the exercise of any power relating to appointment of the body’s chairman, or any non-executive member of the body, may be entered into under section 60(4). 10
- (6) In this Part “non-executive members” –
- (a) in relation to a body whose members are known as directors, means non-executive directors, and
  - (b) in relation to a body in the case of which no distinction is made between executive and non-executive members, means members of the body (apart from the chairman). 15
- (7) Each of the following is a “devolved authority” for the purposes of this Part –
- (a) the Scottish Ministers,
  - (b) the National Assembly for Wales, and 20
  - (c) any Northern Ireland department.

## PART 6

### MISCELLANEOUS

#### *Social care bursary*

- 69 Exercise by Special Health Authority of social care training functions** 25
- After section 67 of the Care Standards Act 2000 (c. 14) insert –
- “67A Exercise by Special Health Authority of functions under s. 67(4)(a)**
- (1) The Secretary of State may direct a Special Health Authority to exercise such of his functions under section 67(4)(a) as may be specified in the directions. 30
  - (2) If the Secretary of State gives a direction under subsection (1), the National Health Service Act 1977 shall have effect as if –
    - (a) the direction were a direction of the Secretary of State under section 16D of that Act, and
    - (b) the functions were exercisable by the Special Health Authority under section 16D. 35
  - (3) Directions under subsection (1) –
    - (a) shall be given by an instrument in writing, and
    - (b) may be varied or revoked by subsequent directions.”

*NHS costs recovery***70 NHS costs recovery**

In section 153 of the 2003 Act (information contained in certificates relating to recovery of NHS charges in cases of injury requiring NHS services), for subsection (9) substitute –

5

“(9) For the purposes of subsection (10), a claim made by or on behalf of an injured person is a qualifying claim if –

(a) it does not fall within subsection (3) or within any other description of claim specified in regulations, and

(b) it is settled, and the damages payable under the settlement are to be reduced to reflect the injured person’s share in the responsibility for the injury in question.”

10

*Transfer of criminal liability***71 Transfer of criminal liabilities of certain NHS bodies**

(1) In section 8 of the 1977 Act (Strategic Health Authorities and Health Authorities) at the end add –

15

“(9) The liabilities which may be transferred by virtue of this section and section 126(4) below to a relevant transferee on the abolition of a Strategic Health Authority include criminal liabilities.

(10) In subsection (9) above “relevant transferee” means –

20

(a) a Special Health Authority,

(b) a Primary Care Trust,

(c) an NHS trust,

(d) an NHS foundation trust, or

(e) another Strategic Health Authority.”

25

(2) In section 11 of that Act (Special Health Authorities) –

(a) after subsection (4) insert –

“(4A) The liabilities which may be transferred by virtue of this section and section 126(3) and (4) below to a relevant transferee on the abolition of a Special Health Authority include criminal liabilities.

30

(4B) In subsection (4A) above “relevant transferee” means –

(a) a Strategic Health Authority,

(b) a Primary Care Trust,

(c) a Local Health Board,

(d) an NHS trust,

(e) an NHS foundation trust, or

(f) another Special Health Authority.”, and

35

(b) in subsection (5) after “an order” insert “as is mentioned in subsection (4) above”.

40

(3) In paragraph 20 of Schedule 5A to that Act (transfer of property, rights and liabilities on dissolution of Primary Care Trust) after sub-paragraph (1)

- insert –
- “(1A) The liabilities which may be transferred by virtue of sub-paragraph (1) above to a Strategic Health Authority, a Special Health Authority, an NHS trust, an NHS foundation trust or another Primary Care Trust include criminal liabilities.” 5
- (4) In paragraph 19 of Schedule 5B to that Act (transfer of property, rights and liabilities on dissolution of Local Health Board) after sub-paragraph (1) insert –
- “(1A) The liabilities which may be transferred by virtue of sub-paragraph (1) above to another Local Health Board include criminal liabilities.” 10
- (5) In paragraph 30 of Schedule 2 to the National Health Service and Community Care Act 1990 (c. 19) (transfer of property, rights and liabilities on dissolution of NHS trust) after sub-paragraph (1) insert –
- “(1A) The liabilities which may be transferred by virtue of sub-paragraph (1) above to any of the bodies mentioned in paragraphs (aa) to (c) of that sub-paragraph include criminal liabilities.” 15
- (6) In section 25 of the 2003 Act (dissolution of NHS foundation trusts) after subsection (3) insert –
- “(3A) The liabilities which may be transferred by virtue of subsection (3) to any of the bodies mentioned in paragraphs (a) to (c) of that subsection include criminal liabilities.” 20
- (7) In section 28 of that Act (supplementary provision about mergers) after subsection (3) insert –
- “(3A) In section 27(1) and (2), and subsections (1) and (2) above, “liabilities” includes criminal liabilities; and an order under subsection (3) above may transfer any remaining criminal liabilities to any of the bodies mentioned in section 25(3)(a) to (c).” 25

## PART 7

### FINAL PROVISIONS

- 72 Offences by bodies corporate etc.** 30
- (1) If an offence committed by a body corporate is proved –
- (a) to have been committed with the consent or connivance of an officer, or
- (b) to be attributable to any neglect on his part,
- the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly. 35
- (2) In subsection (1) “officer”, in relation to the body corporate, means a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.
- (3) If the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate. 40
- (4) If an offence committed by a partnership is proved –

- (a) to have been committed with the consent or connivance of a partner, or  
(b) to be attributable to any neglect on his part,  
the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.
- (5) In subsection (4) “partner” includes a person purporting to act as a partner. 5
- (6) If an offence committed by an unincorporated association (other than a partnership) is proved –  
(a) to have been committed with the consent or connivance of an officer of the association or a member of its governing body, or  
(b) to be attributable to any neglect on the part of such an officer or member, 10  
the officer or member as well as the association is guilty of the offence and liable to be proceeded against and punished accordingly.
- (7) In this section and section 73 “offence” means an offence under any provision of this Act. 15
- 73 Offences committed by partnerships and other unincorporated associations**
- (1) Proceedings for an offence alleged to have been committed by a partnership shall be brought in the name of the partnership (and not in that of any of the partners).
- (2) Proceedings for an offence alleged to have been committed by an unincorporated association (other than a partnership) shall be brought in the name of the association (and not in that of any of its members). 20
- (3) Rules of court relating to the service of documents shall have effect as if the partnership or unincorporated association were a body corporate.
- (4) In proceedings for an offence brought against a partnership or an unincorporated association, the following provisions apply as they apply in relation to a body corporate – 25  
(a) section 33 of the Criminal Justice Act 1925 (c. 86) and Schedule 3 to the Magistrates’ Courts Act 1980 (c. 43);  
(b) sections 70 and 143 of the Criminal Procedure (Scotland) Act 1995 (c. 46); 30  
(c) section 18 of the Criminal Justice Act (Northern Ireland) 1945 (c. 15 (N.I.)) and Schedule 4 to the Magistrates’ Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)).
- (5) A fine imposed on a partnership on its conviction for an offence is to be paid out of the partnership assets. 35
- (6) A fine imposed on an unincorporated association on its conviction for an offence is to be paid out of the funds of the association.
- (7) Subsections (1) and (2) are not to be read as prejudicing any liability of a partner, officer or member under section 72(4) or (6). 40
- 74 Penalties for offences: transitional modification for England and Wales**
- (1) This section contains transitional modifications in respect of penalties for certain offences committed in England and Wales.

- (2) In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (c. 44) (general limit on magistrates' courts power to impose imprisonment), the references in sections 19(2)(b) and 49(5)(b) of this Act to periods of imprisonment of 12 months are to be read as references to periods of imprisonment of 6 months. 5
- (3) In relation to an offence committed before the commencement of section 281(5) of the Criminal Justice Act 2003 (alteration of penalties for summary offences), the references in sections 49(2)(a) and 50(2)(b) of this Act to periods of imprisonment of 51 weeks are to be read as references to periods of imprisonment of 3 months. 10

## 75 Orders and regulations

- (1) Subject to subsection (2), any power to make an order or regulations under this Act is exercisable by statutory instrument.
- (2) Any power of the Department of Health, Social Services and Public Safety to make an order or regulations under this Act is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)). 15
- (3) Any power to make an order or regulations under this Act –  
(a) may be exercised so as to make different provision for different cases or descriptions of case or different purposes or areas, and 20  
(b) includes power to make such incidental, supplementary, consequential, transitory, transitional or saving provision as the authority making the order or regulations considers appropriate.
- (4) No statutory instrument containing –  
(a) regulations under section 3, 4, 6(8), 7(5) or 9(6), 25  
(b) regulations under section 16 which amend or repeal any provision of an Act or an Act of the Scottish Parliament,  
(c) an order under section 42(7),  
(d) an order under section 76(3) which amends or repeals any provision of an Act or an Act of the Scottish Parliament, or 30  
(e) regulations under paragraph 5 or 8 of Schedule 1,  
may be made by the Secretary of State unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (5) Otherwise, a statutory instrument containing any order or regulations made by the Secretary of State under this Act (other than an order under section 79) is to be subject to annulment in pursuance of a resolution of either House of Parliament. 35
- (6) A statutory rule containing regulations made by the Department of Health, Social Services and Public Safety under section 16 which amend or repeal any provision of an Act is to be subject to affirmative resolution within the meaning of section 41(4) of the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.)). 40
- (7) Otherwise, a statutory rule containing regulations made by the Department of Health, Social Services and Public Safety under Chapter 1 of Part 3 is to be subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954. 45

**76 Amendments, repeals and revocations**

- (1) Schedule 8 contains minor and consequential amendments.
- (2) Schedule 9 makes provision for the repeal and revocation of enactments (including enactments which are spent).
- (3) The Secretary of State may by order make – 5  
 (a) such supplementary, incidental or consequential provision, or  
 (b) such transitory, transitional or saving provision,  
 as he considers appropriate for the general purposes of, or any particular purposes, of this Act or in consequence of, or for giving full effect to, any provision made by this Act. 10
- (4) An order under subsection (3) may amend, repeal, revoke or otherwise modify any enactment.

**77 Expenses**

- There shall be paid out of money provided by Parliament –*
- (a) *any expenditure incurred by the Secretary of State by virtue of this Act;* 15  
 (b) *any increase attributable to this Act in the sums payable out of money so provided under any other enactment.*

**78 Interpretation**

- (1) In this Act –  
 “the 1977 Act” means the National Health Service Act 1977 (c. 49); 20  
 “the 2003 Act” means the Health and Social Care (Community Health and Standards) Act 2003 (c. 43);  
 “the appropriate national authority” means –  
 (a) in relation to England, the Secretary of State, and  
 (b) in relation to Wales, the National Assembly for Wales; 25  
 “the health service” –  
 (a) in relation to England and Wales, has the same meaning as in the 1977 Act,  
 (b) in relation to Scotland, has the same meaning as in the National Health Service (Scotland) Act 1978 (c. 29), and 30  
 (c) in relation to Northern Ireland, means health services within the meaning given by Article 2(2) of the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I. 14)).
- (2) In this Act “enactment” includes – 35  
 (a) any provision of subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30)), and  
 (b) (in sections 16(5)(f) and 76(4)) any provision made by or under an Act of the Scottish Parliament or Northern Irish legislation,  
 and references to enactments include enactments passed or made after the passing of this Act. 40
- (3) Subsection (2) applies except where the context otherwise requires.



## 79 Commencement

- (1) The following provisions come into force on the day on which this Act is passed –
  - (a) section 71,
  - (b) sections 75, 76(3) and (4), 77 and 78, this section and section 80, and 5
  - (c) paragraphs 36, 51 and 52 of Schedule 8, and
  - (d) section 76(1) so far as relating to those paragraphs.
- (2) Part 5 comes into force on such day as the Secretary of State, after consulting the National Assembly for Wales, may by order appoint.
- (3) The following provisions come into force in relation to Wales on such day as the National Assembly for Wales may by order appoint – 10
  - (a) Part 1 and sections 72 and 73 so far as relating to offences under that Part, and
  - (b) paragraphs 24(a) and 43 of Schedule 8 and section 76(1) so far as relating to those paragraphs. 15
- (4) The following provisions come into force on such day as the National Assembly for Wales may by order appoint –
  - (a) Chapter 1 of Part 3 and sections 72 to 74 so far as relating to the Assembly’s functions under that Chapter (see section 22) or to offences committed in relation to those functions, 20
  - (b) Chapter 1 of Part 4 so far as relating to the Assembly’s functions under sections 42 and 42B of the 1977 Act,
  - (c) Chapter 3 of Part 4 and sections 72 to 74 so far as relating to the Assembly’s counter fraud functions in relation to the health service in Wales (see section 41) or to offences committed in relation to those functions, 25
  - (d) section 53 and Schedule 3 so far as relating to Welsh NHS bodies (see paragraph 2 of the Schedule 12B inserted by that Schedule),
  - (e) paragraphs 42 and 60 of Schedule 8,
  - (f) Schedule 9 so far as it repeals provisions of the Public Audit (Wales) Act 2004 (c. 23), and 30
  - (g) section 76(1) and (2) so far as relating to the provisions in paragraphs (e) and (f).
- (5) The following provisions come into force on such day as the Department of Health, Social Services and Public Safety may by order appoint – 35
  - (a) Chapter 1 of Part 3 so far as relating to the functions of the Department of Health, Social Services and Public Safety under that Chapter (see section 22), and
  - (b) sections 72 and 73 so far as relating to offences committed in relation to those functions. 40
- (6) Otherwise, this Act comes into force on such day as the Secretary of State may by order appoint.
- (7) Different days may be appointed for different provisions, different purposes or different areas.

## 80 Short title and extent etc.

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- (1) This Act may be cited as the Health Act 2006.

- 
- (2) Subject to subsections (3) and (4), this Act extends to England and Wales only.
- (3) The following provisions extend also to Scotland and Northern Ireland –
- (a) Chapter 1 of Part 3,
  - (b) Part 5, and
  - (c) sections 72, 73, 75 to 79 and this section. 5
- (4) Any amendment, repeal or revocation made by this Act (other than the amendments made by section 70 and paragraph 53 of Schedule 8) has the same extent as the enactment to which it relates.
- (5) The transfer, by virtue of article 2 of and Schedule 1 to the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (S.I. 1999/1750), of the functions of the Secretary of State under section 109 of the Medicines Act 1968 (enforcement in Scotland) does not have effect in relation to the amendments made to the Medicines Act 1968 (c. 67) by Chapter 2 of Part 3 of this Act. 10

## SCHEDULES

### SCHEDULE 1

Section 8

#### FIXED PENALTIES

##### *Contents of penalty notice*

- |   |   |    |
|---|---|----|
| 1 | A penalty notice must –   | 5  |
|   | (a) state the alleged offence, and  |    |
|   | (b) give such particulars of the circumstances alleged to constitute it as are necessary for giving reasonable information about it.    |    |
| 2 | (1) A penalty notice must also state –  | 10 |
|   | (a) the name and address of the enforcement authority on whose behalf the authorised officer was acting when he gave the notice,        |    |
|   | (b) the amount of the penalty and the period for its payment,   |    |
|   | (c) the discounted amount and the period for its payment,   |    |
|   | (d) the consequences of not paying the penalty or the discounted amount before the end of the period mentioned in paragraph (b) or (c), | 15 |
|   | (e) the person to whom and the address at which payment may be made,  |    |
|   | (f) by what method payment may be made,   |    |
|   | (g) the person to whom and the address at which any representations relating to the notice may be made.                                 | 20 |
|   | (2) The person mentioned in sub-paragraph (1)(e) and (g) must be the enforcement authority referred to in sub-paragraph (1)(a).         |    |
| 3 | A penalty notice must also –  | 25 |
|   | (a) inform the person to whom it is given of his right to be tried for the alleged offence, and   |    |
|   | (b) explain how that right may be exercised.  |    |
| 4 | A penalty notice must be in a form specified in regulations made by the appropriate national authority.                                 |    |

##### *Amount of penalty and period for payment* 30

- |   |   |  |
|---|---|--|
| 5 | The penalty is such amount as the Secretary of State may specify in regulations.                                    |  |
| 6 | The period for payment of the penalty is the period of 29 days beginning with the day on which the notice is given. |  |

*Discounted amount and period for payment*

- 7 (1) A discounted amount is payable instead of the amount specified in regulations under paragraph 5 if payment is made before the end of the period for payment of the discounted amount.
- (2) That period is the period of 15 days beginning with the day on which the notice is given, unless the 15th day is not a working day. 5
- (3) If the 15th day is not a working day, that period is the period beginning with the day on which the notice is given and ending immediately after the first working day following the 15th day.
- (4) In this paragraph, “working day” means any day which is not Saturday, Sunday, Christmas Day, Good Friday or a day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971 (c. 80). 10
- 8 The discounted amount is such amount as the Secretary of State may specify in regulations. 15

*Effect of notice and payment*

- 9 (1) Proceedings for the offence in respect of which a penalty notice was given may not be brought before the end of the period for payment of the penalty.
- (2) Sub-paragraph (1) does not apply if the person to whom the notice was given has asked in accordance with paragraphs 14 and 15 to be tried for the alleged offence. 20
- 10 If the penalty is paid in accordance with the penalty notice before the end of the period mentioned in paragraph 9(1), no proceedings for the offence may be brought, and paragraph 14 does not apply.
- 11 If the discounted amount is paid in accordance with the penalty notice before the end of the period for payment of the discounted amount, no proceedings for the offence may be brought, and paragraph 14 does not apply. 25
- 12 If proceedings have been brought pursuant to a request under paragraph 14, but then the penalty or discounted amount is paid as mentioned in paragraph 10 or 11, those proceedings may not be continued. 30
- 13 In any proceedings, a certificate is evidence of the facts which it states if it—
- (a) purports to be signed by or on behalf of the person responsible for the financial affairs of the enforcement authority on whose behalf the authorised officer who gave a penalty notice was acting, and 35
- (b) states that payment of the penalty or discounted amount in pursuance of the notice was or was not received by a date specified in the certificate.

*Trial*

- 14 If the person to whom a penalty notice has been given asks to be tried for the alleged offence, proceedings may be brought against him. 40
- 15 Any request to be tried must be made—

- (a) by notice given to the enforcement authority in question before the end of the period for payment of the penalty,
- (b) in the manner specified in the penalty notice.

*Withdrawal of notices*

- 16 (1) This paragraph applies if an enforcement authority considers that a penalty notice which an authorised officer acting on its behalf has given to a person (“P”) ought not to have been given. 5
- (2) The enforcement authority may give notice to P withdrawing the penalty notice.
- (3) If it does so – 10
  - (a) it must repay any amount which has been paid by way of penalty in pursuance of the penalty notice, and
  - (b) no proceedings may be brought or continued against P for the offence in question.

SCHEDULE 2

Section 10 15

POWERS OF ENTRY, ETC.

- 1 In this Schedule –
  - “authorised officer” means authorised officer of an enforcement authority,
  - “premises” includes any place and any vehicle. 20
- 2 An authorised officer has the right to do any of the following, on production (if required) of his written authority –
  - (a) at any reasonable hour, enter any premises (other than premises used only as a private dwelling house not open to the public) which he considers it is necessary for him to enter for the purpose of the proper exercise of his functions by virtue of Part 1 of this Act, 25
  - (b) there carry out such inspections and examinations as he considers necessary for that purpose,
  - (c) if he considers it necessary for that purpose, require the production of any substance or product, and inspect it, and take and retain samples of or extracts from it, 30
  - (d) take possession of any substance or product on the premises, and retain it for as long as he considers necessary for that purpose,
  - (e) require any person to give him such information, or afford him such facilities and assistance, as he considers necessary for that purpose. 35
- 3 An authorised officer may, if he considers it necessary for the purpose of the proper exercise of his functions by virtue of Part 1 of this Act, arrange for any substance, product, sample or extract mentioned in paragraph 2(c) or (d) to be analysed.
- 4 An authorised officer may make such purchases and secure the provision of such services as he considers necessary for the purpose of the proper exercise of his functions by virtue of Part 1 of this Act. 40

- 
- 5 A person may not be required under paragraph 2 to give any information which he would be entitled to refuse to give in proceedings in the High Court on grounds of legal professional privilege.
- 6 (1) A justice of the peace may exercise the power in sub-paragraph (3) if he is satisfied on sworn information in writing – 5
- (a) that for the purpose of the proper exercise of the functions of an enforcement authority under Part 1 of this Act there are reasonable grounds for entry into any premises other than premises used only as a private dwelling house not open to the public, and
- (b) of either or both of the matters mentioned in sub-paragraph (2). 10
- (2) The matters are –
- (a) that admission to the premises has been, or is likely to be, refused, and that notice of intention to apply for a warrant under this Schedule has been given to the occupier or a person who reasonably appears to the enforcement authority to be concerned in the management of the premises, 15
- (b) that an application for admission, or the giving of such notice, would defeat the object of the entry, or that the premises are unoccupied, or that the occupier is temporarily absent and it might defeat the object of the entry to await his return. 20
- (3) The justice may by warrant signed by him authorise any authorised officer to enter the premises, if need be by force.
- (4) Such a warrant continues in force until the end of the period of one month beginning with the date on which the justice signs it.
- 7 An authorised officer entering any premises by virtue of paragraph 2, or of a warrant under paragraph 6, may take with him such other persons and such equipment as he considers necessary. 25
- 8 If premises which an authorised officer is authorised to enter by a warrant under paragraph 6 are unoccupied, or if the occupier is temporarily absent, then on leaving them that officer must leave the premises as effectively secured against unauthorised entry as he found them. 30
- 9 If by virtue of paragraph 2(d) an authorised officer takes possession of anything, he must leave on the premises from which it was taken a statement giving particulars of what he has taken and stating that he has taken possession of it. 35
- 10 If a direction of the appropriate national authority has effect under section 10(4), this Schedule has effect, in relation to any case or case of a description specified in the direction, as if references to an authorised officer were to a person acting on behalf of the appropriate national authority.

SCHEDULE 3

Section 53

NEW SCHEDULE 12B TO 1977 ACT

“SCHEDULE 12B

ACCOUNTS AND AUDIT

*English and cross-border NHS bodies* 5

- 1 (1) The following are English NHS bodies for the purposes of this Schedule –
- (a) any Strategic Health Authority;
  - (b) any Special Health Authority performing functions only or mainly in respect of England;
  - (c) any Primary Care Trust; 10
  - (d) any NHS trust all or most of whose hospitals, establishments and facilities are situated in England;
  - (e) any trustees for such an NHS trust appointed in pursuance of section 11 of the National Health Service and Community Care Act 1990 (c. 19); 15
  - (f) any special trustees appointed, in pursuance of section 29(1) of the National Health Service Reorganisation Act 1973 (c. 32) and section 95(1) of this Act, for a trust all or most of whose hospitals, establishments and facilities are situated in England;
  - (g) any trustees for a Primary Care Trust appointed in pursuance of section 96B of this Act. 20
- (2) For the purposes of this Schedule a cross-border SHA is a Special Health Authority which neither –
- (a) performs functions only or mainly in respect of England, nor
  - (b) performs functions only or mainly in respect of Wales. 25

*Welsh NHS bodies*

- 2 The following are Welsh NHS bodies for the purposes of this Schedule –
- (a) any Special Health Authority performing functions only or mainly in respect of Wales;
  - (b) any Local Health Board; 30
  - (c) any NHS trust all or most of whose hospitals, establishments and facilities are situated in Wales;
  - (d) any trustees for such an NHS trust appointed as mentioned in paragraph 1(1)(e);
  - (e) any special trustees appointed as mentioned in paragraph 1(1)(f) for a trust all or most of whose hospitals, establishments and facilities are situated in Wales. 35

*Accounts to be kept by NHS bodies*

- 3 (1) Each English NHS body or cross-border SHA must keep accounts in such form as the Secretary of State may direct with the approval of the Treasury. 40  
This is subject to the exception in paragraph 10(2).

- (2) Each Welsh NHS body must keep accounts in such form as the Assembly may direct with the approval of the Treasury.  
This is subject to the exception in paragraph 10(2).

*Auditing of accounts of certain English NHS bodies*

- 4 (1) This paragraph applies to any English NHS body that is not a Special Health Authority (as to which, see paragraph 7). 5  
But it so applies subject to the exception in paragraph 10(2).
- (2) The accounts of any such body are to be audited in accordance with the Audit Commission Act 1998 (c. 18) by an auditor or auditors appointed by the Audit Commission (see section 2(1)(b) of that Act). 10
- (3) The Comptroller and Auditor General may examine –  
(a) any such accounts and any records relating to them, and  
(b) any report on them by the auditor or auditors.
- (4) In this paragraph “the Audit Commission” means the Audit Commission for Local Authorities and the National Health Service in England and Wales. 15

*Preparation of annual accounts*

- 5 (1) Each English NHS body or cross-border SHA must prepare in respect of each financial year annual accounts in such form as the Secretary of State may direct with the approval of the Treasury. 20  
This is subject to the exception in paragraph 10(3).
- (2) Each Welsh NHS body must prepare in respect of each financial year annual accounts in such form as the Assembly may direct with the approval of the Treasury.  
This is subject to the exception in paragraph 10(3).

*Transmission of annual accounts* 25

- 6 (1) Sub-paragraph (2) applies to any English NHS body or cross-border SHA.
- (2) Any annual accounts prepared by any such body under paragraph 5 must be transmitted by the body to the Secretary of State by the specified date. 30  
The “specified date”, in relation to a financial year, means such date as the Secretary of State may direct in relation to that year.
- (3) If the body is a Special Health Authority, it must send a copy of the annual accounts to the Comptroller and Auditor General as soon as is reasonably practicable following the end of the financial year in question.
- (4) If the body is a Primary Care Trust, it must send a copy of the annual accounts to the Strategic Health Authority within whose area the Trust’s area falls. 35
- (5) Section 61(1) of the Public Audit (Wales) Act 2004 (c. 23) (audit of Welsh NHS bodies) makes provision for the annual accounts of Welsh NHS bodies to be submitted to the Auditor General for Wales in order for them to be examined by him. 40



*Auditing of certain Special Health Authority accounts by Comptroller and Auditor General*

- 7 (1) This paragraph applies where a Special Health Authority that is an English NHS body or cross-border SHA sends a copy of its annual accounts to the Comptroller and Auditor General under paragraph 6(3).
- (2) The Comptroller and Auditor General must examine, certify and report on the accounts. 5
- (3) The Authority must lay before both Houses of Parliament –
- (a) a copy of the accounts, and
  - (b) the Comptroller and Auditor General’s report on them.

*Summarised accounts of English NHS bodies other than Special Health Authorities* 10

- 8 (1) This paragraph applies in relation to English NHS bodies that are not Special Health Authorities.
- (2) The Secretary of State must prepare summarised accounts relating to such bodies in respect of each financial year.  
This is subject to the exceptions in paragraphs 10(3) and 11(2). 15
- (3) The summarised accounts must be prepared in such form as the Treasury may direct.
- (4) The Secretary of State must transmit the summarised accounts to the Comptroller and Auditor General not later than the end of the month of November following the financial year to which they relate. 20
- (5) The Comptroller and Auditor General must –
- (a) examine and certify the summarised accounts, and
  - (b) lay copies of them and his report on them before both Houses of Parliament.
- (6) This paragraph has effect subject to any provision made under section 14(1) of the Government Resources and Accounts Act 2000 (power to disapply this paragraph in relation to specified bodies and years). 25

*Summarised accounts of Welsh NHS bodies*

- 9 (1) This paragraph applies in relation to Welsh NHS bodies that are not Special Health Authorities. 30
- (2) The Assembly must prepare summarised accounts relating to such bodies in respect of each financial year.  
This is subject to the exceptions in paragraphs 10(3) and 11(2).
- (3) The summarised accounts must be prepared in such form as the Treasury may direct. 35
- (4) The Assembly must transmit the summarised accounts to the Auditor General for Wales not later than the end of the month of November following the financial year to which they relate.
- (5) The Auditor General for Wales must –
- (a) examine and certify the summarised accounts, and 40
  - (b) lay copies of them and his report on them before the Assembly.

- (6) This paragraph has effect subject to any provision made under section 14(1) of the Government Resources and Accounts Act 2000 (power to disapply this paragraph in relation to specified bodies and years).

*Exceptions for accounts of charitable trusts*

- 10 (1) For the purposes of this paragraph a “relevant charitable trust”, in relation to an NHS body, means a charitable trust whose trustee or trustees is or are that body. 5
- (2) Nothing in paragraph 3 or 4, so far as it applies to an NHS body of any description, has effect in relation to accounts relating to a relevant charitable trust. 10
- (3) Nothing in paragraph 5, 8 or 9, so far as it relates to an NHS body of any description, requires any annual or summarised accounts prepared by or in relation to the body to include matters relating to a relevant charitable trust.
- (4) In this paragraph “NHS body” means a body which is an English NHS body, a Welsh NHS body or a cross-border SHA. 15

*Exceptions for accounts of non-charitable trusts*

- 11 (1) For the purposes of this paragraph a “relevant non-charitable trust”, in relation to an NHS body, means a trust which is not a charitable trust and whose trustee or trustees is or are that body.
- (2) Nothing in paragraph 8 or 9, so far as it relates to an NHS body of any description, requires any summarised accounts prepared in relation to the body to include matters relating to a relevant non-charitable trust. 20
- (3) In this paragraph “NHS body” means a body which is an English NHS body, a Welsh NHS body or a cross-border SHA.

*Meaning of “the Assembly”* 25

- 12 In this Schedule “the Assembly” means the National Assembly for Wales.”

SCHEDULE 4

Section 54

THE APPOINTMENTS COMMISSION: SUPPLEMENTARY

*Status*

- 1 (1) The Commission is not to be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown. 30
- (2) The Commission’s property is not to be regarded as property of, or property held on behalf of, the Crown.

*The Board of the Commission*

- 2 The Commission is to consist of the following members – 35
- (a) the chairman,
- (b) the prescribed number of non-executive members,

- (c) the chief executive, and
- (d) the prescribed number of executive members.

*Chairman and non-executive members*

- 3 (1) The chairman and non-executive members are to be appointed by the Secretary of State. 5
- (2) Of the non-executive members at least one (but not more than four) must be persons who are also appointed to be health and social care commissioners under paragraph 10.
- (3) Regulations may – 10
  - (a) prescribe conditions which must be satisfied in relation to a person before he is appointed as chairman or as a non-executive member;
  - (b) make provision as to the circumstances in which a person is disqualified for being the chairman or a non-executive member.

*Chief executive*

- 4 (1) The chief executive is to be appointed by the chairman and the non-executive members of the Commission. 15
- (2) The chief executive must be –
  - (a) an employee of the Commission, or
  - (b) a person seconded to the staff of the Commission.
- (3) Anything authorised or required to be done by the chief executive may be done by any other member of the Commission's staff who is authorised for the purpose by the chief executive (whether generally or specially). 20

*The executive members*

- 5 (1) The executive members are to be appointed by the chairman and the non-executive members of the Commission. 25
- (2) The executive members must be –
  - (a) employees of the Commission, or
  - (b) persons seconded to the staff of the Commission.
- (3) A person may not be appointed as an executive member unless he is recommended for appointment by the chief executive. 30

*The vice-chairman*

- 6 The members of the Commission may appoint one of the non-executive members to be vice-chairman for such period (not exceeding the remainder of his period of office as member) as they specify on making the appointment. 35

*Terms of appointment: chairman and non-executive members*

- 7 (1) Regulations may make provision as to the terms on which the chairman and non-executive members of the Commission are to be appointed.
- (2) The regulations may in particular make provision as to –

- (a) the period for which they are to hold office;
  - (b) their eligibility for re-appointment;
  - (c) remuneration and allowances;
  - (d) circumstances in which their membership may be suspended or terminated. 5
- (3) Sub-paragraph (4) applies if –
- (a) a person ceases to hold office as chairman or a non-executive member of the Commission, and
  - (b) the Secretary of State determines that there are special circumstances that make it appropriate for that person to receive compensation. 10
- (4) *The Secretary of State must –*
- (a) *pay to that person such compensation as the Secretary of State may determine, or*
  - (b) *make provision for the payment to or in respect of that person of such pension, allowances or gratuities by way of compensation as the Secretary of State may determine.* 15

*Terms of appointment: chief executive and executive members*

- 8 (1) The Commission must determine –
- (a) the conditions of service of, and
  - (b) the remuneration and allowances payable to, the chief executive and the executive members. 20
- (2) The chief executive or (as the case may be) an executive member must not take part in a discussion or decision in pursuance of sub-paragraph (1) which relates to –
- (a) his own conditions of service, or
  - (b) remuneration or allowances payable to him. 25
- (3) If the chief executive or an executive member is a person seconded to the Commission –
- (a) his conditions of service, and
  - (b) remuneration or allowances payable to him, 30
- must be determined by agreement between his employer and the Commission.

*Committees: general*

- 9 (1) The Commission may appoint such committees and sub-committees as it thinks appropriate. 35
- (2) A committee or sub-committee may consist of or include persons who are not members of the Commission.
- (3) The Commission –
- (a) may delegate to a committee or sub-committee such of its functions as it thinks fit; and
  - (b) may, in particular, delegate to a committee the function of appointing a sub-committee. 40
- (4) The Commission may make arrangements for the payment of such remuneration and allowances as it thinks fit to any person who –

- (a) is a member of a committee or sub-committee, but
  - (b) is not an employee of the Commission,  
whether or not he is also a member of the Commission.
- (5) This paragraph is subject to paragraph 10 and to any directions given by the Secretary of State. 5

*The Health and Social Care Appointments Committee*

- 10 (1) There is to be a committee of the Commission to be known as the Health and Social Care Appointments Committee.
- (2) The Committee is to discharge on behalf of the Commission –
- (a) the functions which are exercisable by it by virtue of directions under section 55, 57 or 58, and 10
  - (b) such other functions as the Secretary of State may specify.
- (3) The Committee is to consist of –
- (a) the chairman of the Commission,
  - (b) the chief executive, and 15
  - (c) not more than the prescribed number of persons appointed by the Secretary of State.
- (4) The persons so appointed are to be known as “health and social care commissioners”.
- (5) Regulations may make provision as to the terms on which the health and social care commissioners are to be appointed. 20
- (6) The regulations may in particular make provision as to –
- (a) the period for which they are to hold office as health and social care commissioners;
  - (b) their eligibility for re-appointment as such commissioners; 25
  - (c) remuneration and allowances payable to them as such commissioners;
  - (d) circumstances in which they may be suspended or removed from office as such commissioners.

*Proceedings* 30

- 11 (1) The Commission may make such provision as it thinks fit to regulate –
- (a) its own proceedings (including quorum), and
  - (b) the procedure (including quorum) of its committees and sub-committees.
- (2) Sub-paragraph (1) has effect subject to any directions given by the Secretary of State. 35
- 12 On any occasion when both the chairman and the vice-chairman are, for any reason, unable to perform the duties of chairman, the other members of the Commission may appoint one of the non-executive members to act in the place of the chairman. 40
- 13 The validity of any proceedings of the Commission, or any of its committees or sub-committees, is not affected by –

- 
- (a) any vacancy in the office of chairman or chief executive or in the membership of the Commission or the committee or sub-committee, or
- (b) any defect in the appointment of the chairman or the chief executive or as member of the Commission or the committee or sub-committee. 5
- 14 The Public Bodies (Admission to Meetings) Act 1960 (c. 67) applies to meetings of the Commission.
- Staff*
- 15 (1) The Commission may appoint such persons to be employees of the Commission as it thinks fit. 10
- (2) The Commission may make arrangements for persons to be seconded to the Commission to serve as members of its staff.
- (3) A period of secondment on the staff of the Commission does not affect the continuity of a person's employment with the employer from whose service he is seconded. 15
- (4) References in this Schedule to members of the Commission's staff are to persons who either are employees of the Commission or have been seconded to it to serve as members of its staff.
- 16 (1) Employees of the Commission are to be appointed on such terms and conditions as the Commission determines. 20
- (2) Without prejudice to its other powers, the Commission 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, to or in respect of its employees. 25
- 17 (1) The Commission may, to such extent as it determines, delegate any of its functions to any members of its staff.
- (2) Any committee of the Commission may, to such extent as the committee determines, delegate any function conferred on it to any of its sub-committees or any member of the Commission's staff. 30
- (3) This paragraph is subject to any directions given by the Secretary of State; and sub-paragraph (2) does not apply in relation to decisions falling to be made by the Health and Social Care Appointments Committee in relation to particular appointments.
- Financing of Commission* 35
- 18 (1) *The Secretary of State may make—*
- (a) *such annual payments to the Commission as he thinks appropriate in respect of the performance by it of functions to which sub-paragraph (2) applies, and*
- (b) *such other payments to the Commission as he thinks appropriate in respect of the performance by it of functions to which sub-paragraph (3) applies.* 40
- (2) This sub-paragraph applies to—

- (a) any functions exercisable by virtue of a direction under section 55 in relation to NHS bodies other than Special Health Authorities, and
  - (b) such other of the Commission’s functions as may be prescribed.
- (3) This sub-paragraph applies to any functions exercisable by virtue of a direction under section 55 in relation to – 5
  - (a) Special Health Authorities, or
  - (b) bodies mentioned in section 55(3) or (4) or section 57.
- (4) Before deciding the amount of any payment under this paragraph the Secretary of State must take account of any income received by the Commission from any other source. 10
- (5) Payments under this paragraph may be made –
  - (a) at such times, and
  - (b) subject to such conditions (if any),as the Secretary of State thinks appropriate.
- 19 The National Assembly for Wales may make such payments to the Commission as the Assembly thinks appropriate in respect of the performance by the Commission of functions exercisable by virtue of a direction under section 58. 15
- 20 (1) *The Secretary of State may make loans to the Commission.*
- (2) A loan under this paragraph may be made on such terms as the Secretary of State thinks appropriate. 20
- 21 (1) The Commission may charge for providing –
  - (a) any services under arrangements under section 60(2) or (4),
  - (b) any services under section 61(1) to (3), or
  - (c) such other services as may be prescribed. 25
- (2) The amount of any charge is to be fixed in such a way as the Commission considers appropriate for recovering the costs incurred by it in, or in connection with, providing the services in question.

*Accounts*

- 22 (1) The Commission must keep accounts in such form as the Secretary of State directs. 30
- (2) The Commission must prepare annual reports in respect of each financial year in such form as the Secretary of State directs.
- (3) Before the end of the specified period following each financial year the Commission must send a copy of the annual accounts for that year – 35
  - (a) to the Secretary of State, and
  - (b) to the Comptroller and Auditor General.
- (4) The Comptroller and Auditor General must –
  - (a) examine, certify and report on the annual accounts, and
  - (b) lay a copy of his report before each House of Parliament. 40
- (5) The “specified period” is such period as the Secretary of State directs.

*Authentication of seal*

- 23 (1) The application of the Commission’s seal must be authenticated by the signature of the chairman or another member of the Commission or any other person authorised by the Commission for the purpose.
- (2) A document purporting to be duly executed under the seal of the Commission or to be signed on behalf of the Commission is to be – 5
- (a) received in evidence, and
- (b) unless the contrary is proved, taken to be so executed or signed.
- (3) This paragraph does not apply in relation to Scotland.

## SCHEDULE 5

Section 55

10

## THE APPOINTMENTS COMMISSION: LIST OF STATUTORY BODIES

## LIST OF STATUTORY BODIES REFERRED TO IN SECTION 55(3)

- The Commission for Healthcare Audit and Inspection.
- The Commission for Patient and Public Involvement in Health.
- The Commission for Social Care Inspection. 15
- The Council for the Regulation of Health Care Professionals.
- The General Social Care Council.
- The Health Protection Agency.
- The Human Fertilisation and Embryology Authority.
- The Human Tissue Authority. 20
- The National Biological Standards Board.
- The Independent Regulator of NHS Foundation Trusts.
- The Postgraduate Medical Education and Training Board.

## SCHEDULE 6

Section 57

## THE APPOINTMENTS COMMISSION: LIST OF REGULATORY BODIES 25

## LIST OF REGULATORY BODIES REFERRED TO IN SECTION 57(1)

- The General Chiropractic Council.
- The General Dental Council.
- The General Medical Council.
- The General Optical Council. 30
- The General Osteopathic Council.
- The Health Professions Council.
- The Nursing and Midwifery Council.



SCHEDULE 7

Section 66

TRANSFER OF STAFF AND PROPERTY ETC. TO APPOINTMENTS COMMISSION

*Interpretation*

- 1 In this Schedule –
- “the appointed day” means the day appointed under section 79 for the coming into force of section 54(4), 5
  - “employee” means a person who immediately before the appointed day is an employee of the NHSAC, and
  - “the NHSAC” means the National Health Service Appointments Commission. 10

*Transfer of staff*

- 2 (1) An employee’s contract of employment has effect on and after the appointed day as if originally made between him and the Commission.
- (2) Accordingly –
- (a) all the rights, powers, duties and liabilities of the NHSAC under or in connection with the contract of employment are by virtue of this paragraph transferred to the Commission on the appointed day, and 15
  - (b) anything done before the appointed day by or in relation to the NHSAC in respect of that contract or the employee is to be treated on and after that day as having been done by or in relation to the Commission. 20
- (3) If before the appointed day an employee informs the NHSAC that he does not wish to become an employee of the Commission –
- (a) sub-paragraphs (1) and (2) do not apply in relation to him, and
  - (b) his contract of employment is terminated on the appointed day. 25
- (4) An employee is not to be treated for any purpose as being dismissed by reason of the operation of any provision of this paragraph in relation to him.
- (5) Nothing in this paragraph affects any right of an employee to terminate his contract of employment if a substantial change is made to his detriment in his working conditions. 30
- (6) But no such right arises by reason only that, by virtue of this paragraph, the identity of his employer changes unless he shows that, in all the circumstances, the change is significant and is to his detriment.

*Transfer of property, rights and liabilities*

- 3 (1) By virtue of this paragraph the property, rights and liabilities (including criminal liabilities) of the NHSAC existing immediately before the appointed day are transferred to the Commission on the appointed day. 35
- (2) Anything done by or in relation to the NHSAC which is in effect immediately before the appointed day is to be treated on and after the appointed day as done by or in relation to the Commission. 40
- (3) Anything (including any legal proceedings) which –
- (a) relates to anything transferred by sub-paragraph (1), and

(b) is in the process of being done by or in relation to the NHSAC, may be continued on and after the appointed day by or in relation to the Commission.

- (4) Sub-paragraph (1) does not have effect in relation to any rights or liabilities transferred by virtue of paragraph 2(2)(a). 5
- (5) Sub-paragraph (2) does not have effect in relation to anything treated as done by or in relation to the Commission by virtue of paragraph 2(2)(b).

#### General

- 4 Nothing in this Schedule affects the validity of anything done by the NHSAC. 10

### SCHEDULE 8

Section 76

#### MINOR AND CONSEQUENTIAL AMENDMENTS

##### *Pharmacy Act 1954 (c. 61)*

- 1 The Pharmacy Act 1954 has effect subject to the following amendments.
- 2 In section 15 (appointment of additional members to the council of the Pharmaceutical Society of Great Britain) omit subsections (3) and (4). 15
- 3 In Schedule 1 (statutory committee of the Pharmaceutical Society) omit paragraph 3A.

##### *House of Commons Disqualification Act 1975 (c. 24)*

- 4 In Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975 (bodies of which all members are disqualified) insert at the appropriate place – 20
- “The Appointments Commission.”

##### *Northern Ireland Assembly Disqualification Act 1975 (c. 25)*

- 5 In Part 2 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (bodies of which all members are disqualified) insert at the appropriate place – 25
- “The Appointments Commission.”

##### *National Health Service Act 1977 (c. 49)*

- 6 The 1977 Act has effect subject to the following amendments. 30
- 7 (1) Section 3 (services generally) is amended as follows.
- (2) In subsection (1)(c) after “dental,” insert “ophthalmic,”.
- (3) In subsection (3) after “ophthalmic” insert “services in Wales”.
- (4) In subsection (4) – 35
- (a) in paragraph (a) for “or 16CC(2)” substitute “, 16CC(2) or 16CD(4)”,

- (b) in paragraph (b) for “or a general dental services contract” substitute “, a general dental services contract or a general ophthalmic services contract”.
- 8 In section 15(1)(a) (duty of Health Authority in relation to family health services) – 5
- (a) omit “general ophthalmic services”,
- (b) at the end add “and also such arrangements for the provision of primary ophthalmic services for their area if it is in England, or general ophthalmic services for their area if it is in Wales;”.
- 9 In section 18A(3) (provision of services etc.) – 10
- (a) in paragraph (a), omit “general ophthalmic or”,
- (b) in paragraph (b), for “or primary dental services” substitute “, primary dental services or primary ophthalmic services”.
- 10 In section 19(1) (advisory committees for Wales) for paragraph (e) substitute – 15
- “(e) the optometrists,”.
- 11 In section 26 (supply of goods and services by Secretary of State) –
- (a) in subsection (2)(b), for “or a general dental services contract” substitute “, a general dental services contract or a general ophthalmic services contract”, 20
- (b) in subsection (4)(aa), for “or a general dental services contract” substitute “, a general dental services contract or a general ophthalmic services contract”.
- 12 In section 38(1) (arrangements for general ophthalmic services) –
- (a) omit “of every Primary Care Trust and”, 25
- (b) for “ophthalmic opticians” substitute “optometrists”.
- 13 (1) Section 39 (regulations as to section 38) is amended as follows.
- (2) In subsection (1)(a) omit “by each Primary Care Trust and”.
- (3) In subsection (1)(a) and (d) for “ophthalmic opticians” substitute “optometrists”. 30
- (4) In subsections (1)(b) and (c) and (2)(a) for “ophthalmic optician” substitute “optometrist”.
- (5) In subsections (1) and (2) omit “Primary Care Trust or” in each place where it occurs.
- (6) In subsection (3) omit “Primary Care Trust or” and “of the Primary Care Trust or”. 35
- 14 In section 41(3)(d) (arrangements for pharmaceutical services) for “ophthalmic opticians” substitute “optometrists”.
- 15 In section 43D(1) (supplementary lists) at the end add “(but in relation to general ophthalmic services this subsection has effect with the omission of the references to Primary Care Trusts)”. 40
- 16 In section 44(B2) (recognition of Local Optical Committees and Local Pharmaceutical Committees) –
- (a) omit paragraph (a),

- (b) omit “the Local Optical Committee or”,  
(c) omit “, as the case may be,”.
- 17 (1) Section 45A (Local Medical Committees) is amended as follows.
- (2) In subsection (3), omit “and” at the end of paragraph (a) and after that paragraph insert – 5  
“(aa) every medical practitioner who, under a general ophthalmic services contract entered into by him, is providing primary ophthalmic services in the area for which the committee is formed; and”.
- (3) For subsection (4)(a) substitute – 10  
“(a) who is performing primary medical services or primary ophthalmic services in the area for which the committee is formed –  
(i) pursuant to section 16CC(2)(a) or 16CD(4)(a) above respectively; 15  
(ii) (in relation to primary medical services) in accordance with section 28C arrangements; or  
(iii) under a general medical services contract or a general ophthalmic services contract, as the case may be; and”. 20
- 18 In section 49F(1)(d) (disqualification of practitioners) for “ophthalmic opticians” substitute “optometrists”.
- 19 In section 49H(1)(a) and (b) (fraud and unsuitability: supplementary) for “ophthalmic optician” substitute “optometrist”.
- 20 In section 49N(4)(b) (national disqualification) omit “(or, in the case of a medical list, to nominate or approve him for inclusion in it)”. 25
- 21 In section 72(5) (permission for use of facilities in private practice) –  
(a) in paragraph (a) for “ophthalmic opticians” substitute “optometrists”,  
(b) in paragraph (d) – 30  
(i) for “or primary dental services” substitute “, primary dental services or primary ophthalmic services”,  
(ii) for “or a general dental services contract” substitute “, a general dental services contract or a general ophthalmic services contract”. 35
- 22 In section 103(1)(a) (special arrangements as to payment of remuneration) for “or primary dental services” substitute “, primary dental services or primary ophthalmic services”.
- 23 In section 126(4) (orders and regulations, and directions) for “or 28U” substitute “, 28U or 28WD”. 40
- 24 In section 128(1) (interpretation and construction) –  
(a) at the appropriate place insert –  
““financial year” means a period of 12 months ending with 31st March in any year;”,  
(b) in the definition of “ophthalmic optician”, for ““ophthalmic optician”” substitute ““optometrist””. 45

- 25 In Schedule 9A (the Family Health Services Appeal Authority), in paragraph 6(c) for “ophthalmic optician” substitute “optometrist”.

*Medical Act 1983 (c. 54)*

- 26 In Schedule 1 (the General Medical Council etc.) omit paragraph 4ZA.

*Dentists Act 1984 (c. 24)*

5

- 27 (1) Schedule 1 to the Dentists Act 1984 (the General Dental Council etc.) is amended as follows.
- (2) In paragraph 1(5) for “paragraphs 2 and 2A” substitute “paragraph 2”.
- (3) Omit paragraph 2A.

*Opticians Act 1989 (c. 21)*

10

- 28 In Schedule 1 to the Opticians Act 1989 (the General Optical Council) omit paragraph 2A.

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

- 29 (1) Section 4A of the National Health Service and Community Care Act 1990 (provision of certain services under NHS contracts) is amended as follows. 15
- (2) In subsection (1)–
- (a) omit “or” at the end of paragraph (a), and after that paragraph insert–
- “(aa) by a contractor under a general ophthalmic services contract, or”, 20
- (b) at the end add “other than under section 16CD of that Act”.
- (3) In subsection (3), before the definition of “health service body” insert–
- ““general ophthalmic services contract” and “contractor” under such a contract have the meanings given by section 28WA of the principal Act;”. 25

*Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52)*

- 30 In section 279(2) of the Trade Union and Labour Relations (Consolidation) Act 1992 (health service practitioners)–
- (a) for “or primary dental services” substitute “, primary dental services or primary ophthalmic services”, 30
- (b) at the end of paragraph (b) add “or under a contract under section 28WA of that Act entered into by him with a Primary Care Trust,”.

*Osteopaths Act 1993 (c. 21)*

- 31 In the Schedule to the Osteopaths Act 1993 (the General Osteopathic Council etc.) omit paragraph 11A. 35

*Health Service Commissioners Act 1993 (c. 46)*

- 32 The Health Service Commissioners Act 1993 has effect subject to the following amendments.
- 33 In section 2A(1) (health service providers subject to investigation) –
- (a) in paragraph (a), for “or 28Q” substitute “, 28Q or 28WA”, 5
  - (b) in paragraph (b), omit “general ophthalmic services or”.
- 34 In section 6(5) (general health services and service committees) omit “38, 39”.

*Chiropractors Act 1994 (c. 17)*

- 35 In Schedule 1 to the Chiropractors Act 1994 (the General Chiropractic Council etc.) omit paragraph 11A. 10

*National Health Service (Residual Liabilities) Act 1996 (c. 15)*

- 36 (1) Section 1 of the National Health Service (Residual Liabilities) Act 1996 (transfer of residual liabilities of certain NHS bodies) is amended as follows.
- (2) In subsection (1) –
- (a) for “Health Authority,” substitute “Local Health Board,”, and 15
  - (b) after “all of its liabilities” insert “(other than any criminal liabilities)”.
- (3) In subsection (2) –
- (a) for paragraph (c) substitute –
  - “(c) a Local Health Board;”, and
  - (b) after paragraph (dd) insert “; or 20
  - “(de) an NHS foundation trust.”

*Employment Rights Act 1996 (c. 18)*

- 37 In section 43K(1)(ba) of the Employment Rights Act 1996 (extension of meaning of “worker” etc. for Part 4A) at the end add “or with a Primary Care Trust under section 28WA of that Act”. 25

*Audit Commission Act 1998 (c. 18)*

- 38 The Audit Commission Act 1998 has effect subject to the following amendments.
- 39 In section 5(1)(a) (general duties of auditors in relation to accounts of health service bodies) for “prepared in accordance with directions under subsection (2), or (2B) of section 98 of” substitute “kept in accordance with directions under paragraph 3(1) of Schedule 12B to”. 30
- 40 In section 53(1) (interpretation) for the definition of “health service body” substitute –
- ““health service body” means an English NHS body (within the meaning of Schedule 12B to the National Health Service Act 1977), other than a Special Health Authority;”.
- 41 (1) Schedule 2 to the Audit Commission Act 1998 (accounts subject to audit) is amended as follows. 35

(2) For paragraph 1(g) substitute –  
“(g) a health service body;”.

(3) For paragraph 1A substitute –

“1A But section 2 does not apply to the accounts of a relevant charitable trust (within the meaning of paragraph 10 of Schedule 12B to the National Health Service Act 1977).” 5

(4) Omit paragraph 1C.

*Government of Wales Act 1998 (c. 38)*

42 In section 144(2) of the Government of Wales Act 1998 (accounts, audit and reports) for “section 98(1) of the National Health Service Act 1977 (accounts and audit of NHS bodies)” substitute “paragraph 3(2) of Schedule 12B to the National Health Service Act 1977 (requirement for Welsh NHS bodies to keep accounts)”.

*Government Resources and Accounts Act 2000 (c. 20)*

43 (1) Section 14 of the Government Resources and Accounts Act 2000 (summarised accounts) is amended as follows. 15

(2) In subsection (1) for “section 98(4) of” substitute “paragraph 8 or 9 of Schedule 12B to”.

(3) In subsection (3) after “subsection (1)” insert “in respect of an English NHS body”. 20

(4) For subsection (4) substitute –

“(4) Before making an order under that subsection in respect of a Welsh NHS body the Treasury shall consult –  
(a) the National Assembly for Wales, and  
(b) the Auditor General for Wales.” 25

(5) At the end add –

“(6) In this section “English NHS body” and “Welsh NHS body” have the same meanings as in Schedule 12B to the National Health Service Act 1977.”

*Freedom of Information Act 2000 (c. 36)* 30

44 (1) Schedule 1 to the Freedom of Information Act 2000 (public authorities) is amended as follows.

(2) In Part 1, in paragraph 43A –

(a) for “or primary dental services” substitute “, primary dental services or primary ophthalmic services”, 35

(b) in paragraph (b) for “or 28Q” substitute “, 28Q or 28WA”.

(3) In Part 6, at the appropriate place insert –

“The Appointments Commission.”

*Nursing and Midwifery Order 2001 (S.I. 2002/253)*

- 45 In Schedule 1 to the Nursing and Midwifery Order 2001 (the Nursing and Midwifery Council etc.) omit paragraph 15A.

*Health Professions Order 2001 (S.I. 2002/254)*

- 46 In Schedule 1 to the Health Professions Order 2001 (the Health Professions Council etc.) omit paragraph 16A. 5

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

- 47 The National Health Service Reform and Health Care Professions Act 2002 has effect subject to the following amendments.
- 48 In section 17(1) (entry and inspection of premises) – 10
- (a) for the second paragraph (fa) substitute –
- “(fb) persons providing primary medical services, primary dental services or primary ophthalmic services under Part 1 of the 1977 Act,”
- (b) in subsection (2), for “(1)(fa),” substitute “(1)(fb),”. 15
- 49 In Schedule 6 (the Commission for Patient and Public Involvement in Health) omit paragraph 6.
- 50 In Schedule 7 (the Council for the Regulation of Health Care Professionals) omit paragraph 5.

*Health and Social Care (Community Health and Standards) Act 2003 (c. 43)* 20

- 51 The 2003 Act has effect subject to the following amendments.
- 52 In section 7(5) (continuity of bodies which become NHS foundation trusts and their liabilities) after “liabilities” add “(including its criminal liabilities)”.
- 53 In section 150(7)(d) (liability to pay NHS charges) for sub-paragraph (ii) substitute – 25
- “(ii) section 2C, 17C, 17J or 25 of the 1978 Act (primary medical services or personal or general dental services).”
- 54 In section 187 (appointments to certain health and social care bodies) omit subsections (1) to (7), (9) and (10). 30
- 55 Omit section 188 (appointments to certain health and social care bodies: joint functions).
- 56 (1) In Schedule 6 (the Commission for Health Care Audit and Inspection: supplementary) paragraph 3 is amended as follows.
- (2) In sub-paragraph (1) – 35
- (a) in paragraphs (a) and (c) for “relevant Special Health Authority” substitute “Secretary of State”, and
- (b) in paragraph (b) for “relevant Special Health Authority who appears to that Authority” substitute “Assembly who appears to the Assembly”. 40



- (3) Omit sub-paragraphs (2), (3), (9), (10), (14) and (15).
- (4) In sub-paragraph (11) –
- (a) for “Special Health Authority referred to in sub-paragraph (2)” substitute “Secretary of State”, and
  - (b) for “Special Health Authority referred to in sub-paragraph (3)” substitute “Assembly”. 5
- 57 (1) In Schedule 7 (the Commission for Social Care Inspection: supplementary paragraph 3 is amended as follows.
- (2) In sub-paragraph (1) for “relevant Special Health Authority” substitute “Secretary of State”. 10
- (3) Omit sub-paragraphs (2) and (6) to (8).

*General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003 (S.I. 2003/1250)*

- 58 In Schedule 1 (the Postgraduate Medical Education and Training Board etc.) omit paragraph 4. 15

*Health Protection Agency Act 2004 (c. 17)*

- 59 In Schedule 1 (the Health Protection Agency) omit paragraph 2.

*Public Audit (Wales) Act 2004 (c. 23)*

- 60 In section 61(1) of the Public Audit (Wales) Act 2004 (audit of Welsh NHS bodies) for “section 98(2) of the National Health Service Act 1977 (accounts of NHS bodies)” substitute “paragraph 5(2) of Schedule 12B to the National Health Service Act 1977 (preparation of annual accounts of Welsh NHS bodies)”. 20

SCHEDULE 9

Section 76

REPEALS AND REVOCATIONS 25

<i>Short title and chapter or title and number</i>	<i>Extent of repeal or revocation</i>	
Pharmacy Act 1954 (c. 61)	In Schedule 1, paragraph 3A.	
Medicines Act 1968 (c. 67)	In section 77, paragraph (b) and the “and” immediately preceding it.	30
National Health Service Act 1977 (c. 49)	In section 15(1)(a), “general ophthalmic services”. In section 18A(3)(a), “general ophthalmic or”. In section 38(1), “of every Primary Care Trust and”. In section 39, in subsection (1)(a) “by each Primary Care Trust and”; in subsections (1) and (2) “Primary Care Trust or” in each place it occurs; and in subsection (3) “Primary Care Trust or” and “of the Primary Care Trust or”.	35
		40

<i>Short title and chapter or title and number</i>	<i>Extent of repeal or revocation</i>	
National Health Service Act 1977 (c. 49) – <i>cont.</i>	In section 44(B2), paragraph (a); “the Local Optical Committee or”; and “, as the case may be,”.	5
	In section 45A(3), “and” at the end of paragraph (a).	
	In section 49N(4)(b), “(or, in the case of a medical list, to nominate or approve him for inclusion in it)”.	10
	In Schedule 12, in paragraph 2A(1), “or” at the end of paragraph (b).	
Health and Social Services and Social Security Adjudications Act 1983 (c. 41)	In Schedule 5, paragraph 3.	15
Medical Act 1983 (c. 54)	In Schedule 1, paragraph 4ZA.	
Dentists Act 1984 (c. 24)	In Schedule 1, paragraph 2A.	
Opticians Act 1989 (c. 44)	In Schedule 1, paragraph 2A.	
National Health Service and Community Care Act 1990 (c. 19)	In section 4A(1), “or” at the end of paragraph (a). Section 11(7). Section 20(2). In Schedule 2, paragraph 24.	20
Osteopaths Act 1993 (c. 21)	In the Schedule, paragraph 11A.	
Health Service Commissioners Act 1993 (c. 46)	In section 2A(1)(b), “general ophthalmic services or”.	25
	In section 6(5), “38, 39”.	
Chiropractors Act 1994 (c. 17)	In Schedule 1, paragraph 11A.	
Health Authorities Act 1995 (c. 17)	In Schedule 1, paragraph 50.	30
Pharmacists (Fitness to Practise) Act 1997 (c. 19)	In the Schedule, paragraph 5.	
Audit Commission Act 1998 (c. 18)	In Schedule 2, paragraph 1C.	
Health Act 1999 (c. 8)	In Schedule 3, paragraph 2(2). In Schedule 4, paragraph 33.	35
Health Act 1999 (Supplementary, Consequential etc. Provisions) Order 2000 (S.I. 2000/90)	In Schedule 1, paragraph 13(6).	40
Nursing and Midwifery Order 2001 (S.I. 2002/253)	In Schedule 1, paragraph 15A.	
Health Professions Order 2001 (S.I. 2002/254)	In Schedule 1, paragraph 16A.	45
National Health Service Reform and Health Care Professions Act 2002 (c. 17)	Section 35. In Schedule 1, paragraph 29.	

<i>Short title and chapter or title and number</i>	<i>Extent of repeal or revocation</i>	
National Health Service Reform and Health Care Professions Act 2002 (c. 17) – <i>cont.</i>	In Schedule 2, paragraphs 11, 12(3) and (4)(a). In Schedule 5, paragraph 21. In Schedule 6, paragraph 6. In Schedule 7, paragraph 5.	5
Health and Social Care (Community Health and Standards) Act 2003 (c. 43)	In section 187, subsections (1) to (7), (9) and (10). Section 188. In Schedule 6, paragraph 3(2), (3), (9), (10), (14) and (15). In Schedule 7, paragraph 3(2) and (6) to (8). In Schedule 11, paragraph 33. In Schedule 12, paragraphs 1, 2(3), 3(2) and (4) and 4 to 8.	10
General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003 (S.I. 2003/1250)	In Schedule 1, paragraph 4.	15
Government Resources and Accounts Act 2000 (Audit of Health Service Bodies) Order 2003 (S.I. 2003/1324)	In Schedule 2, paragraph 1.	20
Health Protection Agency Act 2004 (c. 17)	In Schedule 1, paragraph 2.	
Public Audit (Wales) Act 2004 (c. 23)	In Schedule 2, paragraphs 2 and 38(2).	25
Government Resources and Accounts Act 2000 (Audit of Health Service Bodies) Order 2004 (S.I. 2004/1714)	Article 2(2) and Schedule 2.	30
Regulatory Reform (National Health Service Charitable and Non-Charitable Trust Accounts and Audit) Order 2005 (S.I. 2005/1074)	Articles 2 and 4.	35

# Health Bill

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## B I L L

To make provision for the prohibition of smoking in certain premises, places and vehicles; to make provision in relation to the prevention and control of health care associated infections; to make provision in relation to the management and use of controlled drugs; to make provision in relation to the supervision of certain dealings with medicinal products and the running of pharmacy premises, and about orders under the Medicines Act 1968 and orders amending that Act under the Health Act 1999; to make further provision about the National Health Service in England and Wales and about the recovery of National Health Service costs; to make provision for the establishment and functions of the Appointments Commission; to make further provision about the exercise of social care training functions; and for connected purposes.

*Presented by Ms Secretary Hewitt  
supported by  
The Prime Minister, Mr Secretary Prescott,  
Mr Chancellor of the Exchequer, Secretary Tessa Jowell,  
Mr Secretary Clarke and Secretary Alan Johnson.*

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*Ordered, by The House of Commons,  
to be printed, 27th October 2005.*

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