



# Health Act 2009

## 2009 CHAPTER 21

An Act to make provision about The NHS Constitution; to make provision about health care (including provision about the National Health Service and health bodies); to make provision for the control of the promotion and sale of tobacco products; to make provision about the investigation of complaints about privately arranged or funded adult social care; and for connected purposes. [12th November 2009]

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

### PART 1

#### QUALITY AND DELIVERY OF NHS SERVICES IN ENGLAND

PROSPECTIVE

### CHAPTER 1

#### NHS CONSTITUTION

#### **1 NHS Constitution**

- (1) In this Chapter the “NHS Constitution” means—
- (a) the document entitled “The NHS Constitution” published by the Secretary of State on 21 January 2009, or
  - (b) any revised version of that document published under section 3 or 4.
- (2) In this Chapter the “Handbook” means—

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- (a) the document entitled “The Handbook to the NHS Constitution” published by the Secretary of State on 21 January 2009, or
- (b) any revised version of that document published under section 5.

## **2 Duty to have regard to NHS Constitution**

- (1) Each of the bodies listed in subsection (2) must, in performing its NHS functions, have regard to the NHS Constitution.
- (2) The bodies are—
  - (a) Strategic Health Authorities;
  - (b) Primary Care Trusts;
  - (c) National Health Service trusts;
  - (d) Special Health Authorities;
  - (e) NHS foundation trusts;
  - (f) the Independent Regulator of NHS Foundation Trusts;
  - (g) the Care Quality Commission.
- (3) In subsection (1) an “NHS function” means any function under an enactment which is a function concerned with, or connected to, the provision, commissioning or regulation of NHS services.
- (4) Each person who—
  - (a) provides NHS services under a contract, agreement or arrangements made under or by virtue of an enactment listed in subsection (6), or
  - (b) provides or assists in providing NHS services under arrangements under section 12(1) of the National Health Service Act 2006 (c. 41),
 must, in doing so, have regard to the NHS Constitution.
- (5) Each person who—
  - (a) in pursuance of a contract, agreement or arrangements as mentioned in subsection (4)(a) or (b), makes arrangements (“sub-contracting arrangements”) for another person to provide or assist in providing NHS services, or
  - (b) provides or assists in providing NHS services under sub-contracting arrangements,
 must, in doing so, have regard to the NHS Constitution.
- (6) The enactments referred to in subsection (4)(a) are the following provisions of the National Health Service Act 2006—
  - (a) section 83(2)(b) (arrangements made by PCTs for provision of primary medical services);
  - (b) section 84(1) (general medical services contracts);
  - (c) section 92 (other arrangements for the provision of primary medical services);
  - (d) section 100(1) (general dental services contracts);
  - (e) section 107(1) (other arrangements for the provision of primary dental services);
  - (f) section 117(1) (general ophthalmic services contracts);
  - (g) section 126(1) (pharmaceutical services);
  - (h) section 127(1) (additional pharmaceutical services);
  - (i) Schedule 12 (local pharmaceutical services schemes).

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(7) In this Chapter “NHS services” means health services provided in England for the purposes of the health service continued under section 1(1) of the National Health Service Act 2006.

(8) References in this section to the provision of services include references to the provision of services jointly with another person.

### **3 Availability and review of NHS Constitution**

(1) The Secretary of State must ensure that the NHS Constitution continues to be available to patients, staff and members of the public.

(2) At least once in any period of 10 years the Secretary of State must carry out a review of the NHS Constitution (referred to in this Chapter as a “10 year review”).

(3) The following must be consulted about the NHS Constitution on a 10 year review—

- (a) patients and bodies or other persons representing patients,
- (b) staff and bodies or other persons representing staff,
- (c) carers,
- (d) local authorities,
- (e) members of the public,
- (f) the bodies and persons listed in section 2(2), (4) and (5), and
- (g) such other persons as the Secretary of State considers appropriate.

(4) The first 10 year review must be completed not later than 5 July 2018.

(5) The guiding principles may not be revised as a result of a 10 year review, except in accordance with regulations made by the Secretary of State setting out the revision to be made.

(6) The Secretary of State must publish the NHS Constitution after any revision made as a result of a 10 year review.

(7) In this Chapter—

“carers” means persons who, as relatives or friends, care for other persons to whom NHS services are being provided;

“the guiding principles” means—

- (a) the 7 principles described in the NHS Constitution published on 21 January 2009 as “the principles that guide the NHS”, or
- (b) any revised version of those principles set out in the NHS Constitution published under this section or section 4;

“patients” means persons to whom NHS services are being provided;

“staff” means—

- (a) persons employed by a body listed in section 2(2) or otherwise working for such a body (whether as or on behalf of a contractor, as a volunteer or otherwise) in, or in connection with, the provision, commissioning or regulation of NHS services;
- (b) persons employed by a person listed in subsection (4) or (5) of section 2 or otherwise working for such a person (whether as or on behalf of a contractor, as a volunteer or otherwise) in, or in connection with, the provision of NHS services or assistance or the making of arrangements as mentioned in the subsection in question.

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- (8) For the purposes of subsection (3), each of the following is a local authority—
- (a) a county council in England;
  - (b) a district council in England, other than a council for a district in a county for which there is a county council;
  - (c) a London borough council;
  - (d) the Common Council of the City of London;
  - (e) the Council of the Isles of Scilly.

#### **4 Other revisions of NHS Constitution**

- (1) This section applies to any revision of the NHS Constitution made other than as a result of a 10 year review (including any such revision which revises the guiding principles).
- (2) Before any revision the Secretary of State must undertake appropriate consultation about the proposed revision.
- (3) The persons consulted must include such patients, staff, members of the public and other persons as appear to the Secretary of State to be affected by the proposed revision.
- (4) The guiding principles may not be revised, except in accordance with regulations made by the Secretary of State setting out the revision to be made.
- (5) The Secretary of State must publish the NHS Constitution after any revision.

#### **5 Availability, review and revision of Handbook**

- (1) The Secretary of State must ensure that the Handbook continues to be available to patients, staff and members of the public.
- (2) At least once in any period of 3 years the Secretary of State must carry out a review of the Handbook.
- (3) The first review must be completed not later than 5 July 2012.
- (4) The Secretary of State must publish the Handbook after any revision (whether made as a result of a review under this section or otherwise).

#### **6 Report on effect of NHS Constitution**

- (1) The Secretary of State must publish a report every 3 years on how the NHS Constitution has affected patients, staff, carers and members of the public, since the last report was produced under this subsection.
- (2) The first report must be published not later than 5 July 2012.
- (3) The Secretary of State must lay before Parliament a copy of each report under subsection (1).

#### **7 Regulations under section 3 or 4**

- (1) The power to make regulations under section 3 or 4 is exercisable by statutory instrument.

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- (2) A statutory instrument containing regulations under either of those sections is subject to annulment in pursuance of a resolution of either House of Parliament.

## CHAPTER 2

### QUALITY ACCOUNTS

#### 8 Duty of providers to publish information

- (1) Each of the bodies listed in subsection (2) must, in accordance with regulations made by the Secretary of State, publish in respect of each reporting period a document containing prescribed information relevant to the quality of—
- (a) any NHS services that the body provides;
  - (b) any NHS services that, under arrangements made by the body, are provided by a person not listed in subsection (2) or (3);
  - (c) any services that are provided in England and for the provision of which the body provides assistance or support under section 124(1) of the National Health Service Act 2006 (c. 41) (primary ophthalmic services).
- (2) The bodies are—
- (a) Primary Care Trusts;
  - (b) National Health Service trusts all or most of whose hospitals, establishments and facilities are in England;
  - (c) Special Health Authorities;
  - (d) NHS foundation trusts.
- (3) Each person who—
- (a) provides NHS services as mentioned in section 2(4)(a),
  - (b) provides or assists in providing NHS services as mentioned in section 2(4)(b),  
or
  - (c) makes arrangements as mentioned in section 2(5)(a) for another person to provide NHS services,
- must, in accordance with regulations made by the Secretary of State, publish in respect of each reporting period a document containing prescribed information relevant to the quality of those services.
- (4) References in this section to the provision of services include references to the provision of services jointly with another person.
- (5) The Secretary of State may by regulations provide that subsection (1) or (3) does not apply to prescribed bodies, persons or services, or to bodies, persons or services of a prescribed description.
- (6) In this section “NHS services” has the same meaning as in Chapter 1.

#### Annotations:

#### Commencement Information

**II** S. 8 partly in force; s. 8 in force for specified purposes at Royal Assent see s. 40(6)(a)

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## 9 Supplementary provision about the duty

- (1) In this section “the provider” means the body or person required to publish a document under section 8.
- (2) For the purposes of that section a reporting period is—
  - (a) the period of 12 months beginning with 1 April 2009, and
  - (b) each subsequent period of 12 months.
- (3) If the Care Quality Commission or a Strategic Health Authority notifies the provider of an error or omission in a document published under that section, the provider must within 21 days of the notification republish the document correcting the error or omission and including a statement explaining the correction.
- (4) A copy of any document published under that section must be sent by the provider to the Secretary of State in any form specified by the Secretary of State for the purpose of enabling the Secretary of State to make the document available to the public.
- (5) Regulations under subsection (1) or (3) of section 8 may in particular make provision—
  - (a) as to the form of a document published under that section and its contents in addition to the prescribed information;
  - (b) imposing duties on the provider for the purpose of ensuring the accuracy of information;
  - (c) as to how and when a document must be published and when a copy must be sent under subsection (4);
  - (d) requiring the provider to have regard to guidance issued by the Secretary of State.
- (6) The provider must at the request of any person provide to that person a copy of any document published by the provider under section 8 relating to a reporting period ending not more than 2 years before the request.
- (7) While subsection (1) or (3) of section 8 applies to the provider, the provider must keep affixed, in a conspicuous place at each of the premises at which the provider provides services to which that subsection applies, a notice stating how the most recent document published by the provider under that section may be obtained.
- (8) Subsection (7) does not apply if—
  - (a) the provider does not have control of the premises, or
  - (b) the services are provided by means such that the persons receiving them do not do so at the premises.
- (9) In subsection (7) “premises” includes a vehicle or moveable structure.

### Annotations:

#### Commencement Information

**12** S. 9 partly in force; s. 9(5) in force for specified purposes at Royal Assent see s. 40(6)(a)

## 10 Regulations under section 8

- (1) The power to make regulations under section 8 is exercisable by statutory instrument.

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- (2) A statutory instrument containing regulations under section 8 is subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) The power to make regulations under section 8—
- (a) may be exercised so as to make the full provision to which the power extends or any less provision (whether by way of exception or otherwise);
  - (b) may be exercised so as to make the same provision for all cases in relation to which the power is exercised, or different provision for different cases;
  - (c) may be exercised so as to make any such provision unconditionally or subject to any specified condition.

**Annotations:**

**Commencement Information**

**I3** S. 10 partly in force; s. 10 in force for specified purposes at Royal Assent see s. 40(6)(a)

PROSPECTIVE

## CHAPTER 3

### DIRECT PAYMENTS

#### 11 Direct payments for health care

In Part 1 of the National Health Service Act 2006 (c. 41), after section 12 insert—

“Direct payments for health care

#### 12A Direct payments for health care

- (1) The Secretary of State may, for the purpose of securing the provision to a patient of anything to which this subsection applies, make payments, with the patient's consent, to the patient or to a person nominated by the patient.
- (2) Subsection (1) applies to—
  - (a) anything that the Secretary of State may or must provide under section 2(1) or 3(1);
  - (b) anything for which the Secretary of State must arrange under paragraph 8 of Schedule 1;
  - (c) vehicles that the Secretary of State may provide under paragraph 9 of that Schedule.
- (3) Subsection (1) is subject to any provision made by regulations under section 12B.
- (4) If regulations so provide, a Primary Care Trust may, for the purpose of securing the provision for a patient of services that the trust must provide under section 117 of the Mental Health Act 1983 (after-care), make payments, with the patient's consent, to the patient or to a person nominated by the patient.

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- (5) A payment under subsection (1) or under regulations under subsection (4) is referred to in this Part as a “direct payment”.
- (6) A direct payment may be made only in accordance with a pilot scheme under regulations made by virtue of section 12C.

## **12B Regulations about direct payments**

- (1) The Secretary of State may make regulations about direct payments.
- (2) The regulations may in particular make provision—
  - (a) as to circumstances in which, and descriptions of persons and services in respect of which, direct payments may or must be made;
  - (b) as to circumstances in which direct payments may or must be made to a person nominated by the patient;
  - (c) as to the making of direct payments (and, in particular, as to persons to whom payments may or must be made) where the patient lacks capacity to consent to the making of the payments;
  - (d) as to conditions that the Secretary of State or the Primary Care Trust must comply with before, after or at the time of making a direct payment;
  - (e) as to conditions that the patient or (if different) the payee may or must be required to comply with before, after, or at the time when a direct payment is made;
  - (f) as to the amount of any direct payment or how it is to be calculated;
  - (g) as to circumstances in which the Secretary of State or the Primary Care Trust may or must stop making direct payments;
  - (h) as to circumstances in which the Secretary of State or the Primary Care Trust may or must require all or part of a direct payment to be repaid, by the payee or otherwise;
  - (i) as to monitoring of the making of direct payments, of their use by the payee, or of services which they are used to secure;
  - (j) as to arrangements to be made by the Secretary of State or the Primary Care Trust for providing patients, payees or their representatives with information, advice or other support in connection with direct payments;
  - (k) for such support to be treated to any prescribed extent as a service in respect of which direct payments may be made.
- (3) If the regulations make provision in the case of a person who lacks capacity to consent to direct payments being made, they may apply that provision, or make corresponding provision, with or without modifications, in the case of a person who has lacked that capacity but no longer does so (whether because of fluctuating capacity, or regaining or gaining capacity).
- (4) The regulations may provide for a sum which must be repaid to the Secretary of State or the Primary Care Trust by virtue of a condition or other requirement imposed by or under the regulations to be recoverable as a debt due to the Secretary of State or the Primary Care Trust.
- (5) The regulations may make provision—

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- (a) for a service in respect of which a direct payment has been made under section 12A(1) to be regarded, only to such extent and subject to such conditions as may be prescribed, as provided or arranged for by the Secretary of State under an enactment mentioned in section 12A(2);
  - (b) displacing functions or obligations of a Primary Care Trust with respect to the provision of after-care services under section 117 of the Mental Health Act 1983, only to such extent and subject to such conditions as may be prescribed.
- (6) In this section—
- (a) “service” includes anything in respect of which direct payments may be made;
  - (b) references to a person lacking capacity are references to a person lacking capacity within the meaning of the Mental Capacity Act 2005.

### **12C Direct payments pilot schemes**

- (1) Regulations under section 12B may provide for the Secretary of State to have power—
- (a) to make pilot schemes in accordance with which direct payments may be made;
  - (b) to include in a pilot scheme, as respects payments to which the scheme applies, any provision within section 12B(2), subject to any provision made by the regulations.
- (2) The regulations may in particular make provision, or provide for the pilot scheme to make provision, as to—
- (a) the geographical area in which a pilot scheme operates;
  - (b) the revocation or amendment of a pilot scheme.
- (3) A pilot scheme must, in accordance with the regulations, specify the period for which it has effect, subject to the extension of that period by the Secretary of State in accordance with the regulations.
- (4) The regulations must make provision as to the review of a pilot scheme, or require the pilot scheme to include such provision.
- (5) Provision as to the review of a pilot scheme may in particular include provision—
- (a) for a review to be carried out by an independent person;
  - (b) for publication of the findings of a review;
  - (c) as to matters to be considered on a review.
- (6) Those matters may in particular include any of the following—
- (a) the administration of the scheme;
  - (b) the effect of direct payments on the cost or quality of care received by patients;
  - (c) the effect of direct payments on the behaviour of patients, carers or persons providing services in respect of which direct payments are made.
- (7) After any review of one or more pilot schemes, the Secretary of State may make an order under subsection (8) or (10).

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- (8) An order under this subsection is an order making provision for either or both of the following—
  - (a) repealing section 12A(6) and subsections (1) to (4) of this section;
  - (b) amending, repealing, or otherwise modifying any other provision of this Act.
- (9) An order may make provision within subsection (8)(b) only if it appears to the Secretary of State to be necessary or expedient for the purpose of facilitating the exercise of the powers conferred by section 12A(1) or by regulations under section 12A(4).
- (10) An order under this subsection is an order repealing sections 12A, 12B, 12D and this section.

### **12D Arrangements with other bodies relating to direct payments**

- (1) The Secretary of State may arrange with any person or body to give assistance in connection with direct payments.
- (2) Arrangements may be made under subsection (1) with voluntary organisations.
- (3) Powers under this section may be exercised on such terms as may be agreed, including terms as to the making of payments by the Secretary of State.”

## **12 Jurisdiction of Health Service Commissioner**

- (1) The Health Service Commissioners Act 1993 (c. 46) is amended as follows.
- (2) In section 2B (independent providers subject to investigation) after subsection (1) insert —
  - “(1A) Persons are subject to investigation by the Commissioner if—
    - (a) they are, or were at the time of the action complained of, providing direct payment services, and
    - (b) they are not, or were not at the time of the action complained of, health service bodies.”
- (3) In subsection (5) of that section after “subsection (1)” insert “ or (1A)”.
- (4) In section 3(1C) (complaints against independent providers) after “(of whatever kind)” insert “ , or has undertaken to provide direct payment services,”.
- (5) In section 7(2) (contractual or commercial transactions) after paragraph (a) insert—
  - “(aa) matters arising from arrangements for the provision of direct payment services,”.
- (6) In section 14 (reports by the Commissioner), in subsection (2C)(e) after “independent provider” insert “ (in a case within section 2B(1))”.
- (7) In section 19 (interpretation) after the definition of “the Court” insert—
  - ““direct payment services” means services in respect of which direct payments have been made under section 12A(1), or under regulations under section 12A(4), of the National Health Service Act 2006;”.

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### **13 Direct payments: minor and consequential amendments**

Schedule 1 (which makes minor and consequential amendments relating to direct payments, including in the case of section 117 of the Mental Health Act 1983 (c. 20), social care direct payments) has effect.

PROSPECTIVE

## **CHAPTER 4**

### **INNOVATION**

### **14 Innovation prizes**

- (1) The Secretary of State may make payments as prizes to promote innovation in the provision of health services in England.
- (2) A prize may relate to—
  - (a) work at any stage of innovation (including research);
  - (b) work done at any time (including work before the commencement of this section).
- (3) The Secretary of State may establish a committee to give advice about the exercise of the power conferred by subsection (1), and may pay remuneration, allowances and expenses to members.

PROSPECTIVE

## **PART 2**

### **POWERS IN RELATION TO HEALTH BODIES**

## **CHAPTER 1**

### **POWERS IN RELATION TO FAILING NHS BODIES IN ENGLAND**

#### **De-authorisation of NHS foundation trusts**

### **15 De-authorisation of NHS foundation trusts**

- (1) In the National Health Service Act 2006 (c. 41) after section 52 insert—

#### **“52A Application of sections 52B to 52E**

- (1) Sections 52B to 52E apply to—

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- (a) an NHS foundation trust authorised under section 35 on an application under section 33;
  - (b) an NHS foundation trust established under section 56 to which subsection (2) applies.
- (2) This subsection applies to an NHS foundation trust if—
- (a) at least one of the trusts on whose application the NHS foundation trust was established was an NHS foundation trust within subsection (1)(a), or was an NHS trust all or most of whose hospitals, establishments and facilities were in England, or
  - (b) the NHS foundation trust is the result of a succession of mergers under section 56, any of which involved an NHS foundation trust within subsection (1)(a) or an NHS trust all or most of whose hospitals, establishments and facilities were in England.

### **52B De-authorisation: regulator's notice**

- (1) The regulator may give the Secretary of State a notice under this section if it is satisfied that—
- (a) an NHS foundation trust to which this section applies is contravening or failing to comply with, or has contravened or failed to comply with, any term of its authorisation or any requirement imposed on it under any enactment, and
  - (b) the seriousness of the contravention or failure, or, if there has been more than one, of any of them taken together, is such that it would justify the Secretary of State making an order under section 52D.
- (2) The notice must be in writing.
- (3) With the notice the regulator must give the Secretary of State a report stating the reasons why it is satisfied as mentioned in subsection (1).
- (4) Before giving a notice under this section, the regulator must consult first the Secretary of State (unless the notice follows a request by the Secretary of State under section 52E) and then—
- (a) the trust,
  - (b) any Strategic Health Authority in whose area the trust has hospitals, establishments or facilities, and
  - (c) any other person to which the trust provides goods or services under this Act and which the regulator considers it appropriate to consult.

### **52C Grounds for de-authorisation notice**

- (1) In determining under section 52B(1)(b) whether the making of an order would be justified, and in determining whether to give a notice under that section, the regulator must consider these matters (among others)—
- (a) the health and safety of patients;
  - (b) the quality of the provision by the trust of goods and services;
  - (c) the financial position of the trust;
  - (d) the way it is being run.

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- (2) The regulator must publish guidance as to the matters (including those mentioned in subsection (1)) that it proposes to consider in making those determinations.
- (3) Before publishing any guidance under this section, including any revised guidance, the regulator must consult—
  - (a) the Secretary of State,
  - (b) each NHS foundation trust to which this section applies,
  - (c) each NHS trust intending to make an application to become an NHS foundation trust, and
  - (d) such other persons as the regulator considers appropriate.

## **52D De-authorisation**

- (1) If the regulator gives notice under section 52B in relation to a trust, the Secretary of State must make an order for it to cease to be an NHS foundation trust.
- (2) An order made under subsection (1) must specify the date when it is to take effect, which must be within the period of 5 working days beginning with the day on which it is made.
- (3) On an order under subsection (1) taking effect in relation to a body, it ceases to be an NHS foundation trust and a public benefit corporation and becomes a National Health Service trust.
- (4) The order must specify, in relation to the trust, the matters mentioned in paragraph 5(1)(a) to (c) of Schedule 4 and, where the trust has a significant teaching commitment, the matters mentioned in paragraph 5(1)(d).
- (5) The order may provide for any provision under subsection (4) specifying the number of executive directors and non-executive directors to take effect at the end of a period specified in the order.
- (6) Schedule 8A makes further provision about trusts in respect of which an order is made under subsection (1).
- (7) If it appears to the Secretary of State to be necessary in order to comply with provision made under subsection (4), or made by regulations under paragraph 4 of Schedule 4, the Secretary of State may by order—
  - (a) terminate the office of any executive or non-executive director of the trust;
  - (b) appoint a person to be an executive or non-executive director of the trust.
- (8) Within seven days after the day on which the Secretary of State makes an order under subsection (1) the regulator must publish its report under section 52B(3).
- (9) In this section “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.

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## **52E Secretary of State's request**

- (1) If it appears to the Secretary of State that there are grounds for the regulator to be satisfied as mentioned in section 52B(1), the Secretary of State may request the regulator in writing to consider exercising its power to give a notice under that section.
  - (2) A request under this section must—
    - (a) specify the NHS foundation trust to which it relates, and
    - (b) state the grounds relied on by the Secretary of State.
  - (3) The Secretary of State must lay before Parliament any request under this section.
  - (4) If within the required period the regulator does not give a notice under section 52B in response to a request under this section, it must, within that period, publish its reasons for not doing so with a statement as to how it has complied with section 52C(1).
  - (5) The required period is—
    - (a) 14 days beginning with the day after the regulator receives the request, or
    - (b) any longer period specified in the request.
  - (6) The Secretary of State may by order extend or further extend the required period.”
- (2) Schedule 2 (which inserts Schedule 8A to the National Health Service Act 2006, which makes provision about de-authorized NHS foundation trusts) has effect.

### Trust special administrators

## **16 Trust special administrators: NHS trusts and NHS foundation trusts**

After section 65 of the National Health Service Act 2006 (c. 41) insert—

### **“CHAPTER 5A**

#### TRUST SPECIAL ADMINISTRATORS: NHS TRUSTS AND NHS FOUNDATION TRUSTS

### Application

## **65A Application**

- (1) This Chapter applies to—
  - (a) an NHS trust all or most of whose hospitals, establishments and facilities are in England;
  - (b) an NHS foundation trust authorised under section 35 on an application under section 33;

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(c) an NHS foundation trust established under section 56 to which subsection (2) applies.

(2) This subsection applies to an NHS foundation trust if—

- (a) at least one of the trusts on whose application the NHS foundation trust was established was an NHS trust within subsection (1)(a) or an NHS foundation trust within subsection (1)(b), or
- (b) the NHS foundation trust is the result of a succession of mergers under section 56, any of which involved an NHS trust within subsection (1)(a) or an NHS foundation trust within subsection (1)(b).

## Appointment

### 65B Appointment of trust special administrator

- (1) The Secretary of State may make an order authorising the appointment of a trust special administrator to exercise the functions of the chairman and directors of an NHS trust to which this Chapter applies.
- (2) An order may be made under subsection (1) only if the Secretary of State considers it appropriate in the interests of the health service.
- (3) The order must specify the date when the appointment is to take effect, which must be within the period of 5 working days beginning with the day on which the order is made.
- (4) Before making the order the Secretary of State must consult—
  - (a) the trust,
  - (b) any Strategic Health Authority in whose area the trust has hospitals, establishments or facilities, and
  - (c) any other person to which the trust provides goods or services under this Act and which the Secretary of State considers it appropriate to consult.
- (5) The Secretary of State must lay before Parliament (with the statutory instrument containing the order) a report stating the reasons for making the order.
- (6) If an order is made under subsection (1), the Secretary of State must—
  - (a) appoint a person as the trust special administrator with effect from the day specified in the order, and
  - (b) publish the name of the person appointed.
- (7) A person appointed as a trust special administrator holds and vacates office in accordance with the terms of the appointment.
- (8) The Secretary of State may pay remuneration and expenses to a trust special administrator.

### 65C Suspension of directors

- (1) When the appointment of a trust special administrator takes effect, the trust's chairman and executive and non-executive directors are suspended from office.

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- (2) Subsection (1) does not affect the employment of the executive directors or their membership of any committee or sub-committee of the trust.

#### De-authorisation of NHS foundation trusts

#### **65D NHS foundation trusts: regulator's notice**

- (1) The regulator may give the Secretary of State a notice under this section if it is satisfied that—
- (a) an NHS foundation trust to which this Chapter applies is failing to comply with a notice under section 52, and
  - (b) further exercise of the powers conferred by section 52 would not be likely to secure the provision of the goods and services which the trust's authorisation requires it to provide.
- (2) The notice must be in writing.
- (3) With the notice the regulator must give the Secretary of State a report stating the reasons why it is satisfied as mentioned in subsection (1).
- (4) Before giving a notice under this section, the regulator must consult first the Secretary of State and then—
- (a) the trust,
  - (b) any Strategic Health Authority in whose area the trust has hospitals, establishments or facilities, and
  - (c) any other person to which the trust provides goods or services under this Act and which the regulator considers it appropriate to consult.

#### **65E NHS foundation trusts: de-authorisation and appointment of trust special administrator**

- (1) If the regulator gives notice under section 65D in relation to a trust, the Secretary of State must make an order for it to cease to be an NHS foundation trust.
- (2) An order made under subsection (1) must specify the date when it is to take effect, which must be within the period of 5 working days beginning with the day on which it is made.
- (3) The Secretary of State must lay before Parliament (with the statutory instrument containing the order) the regulator's report under section 65D(3).
- (4) On an order under subsection (1) taking effect in relation to a body, it ceases to be an NHS foundation trust and a public benefit corporation and becomes a National Health Service trust.
- (5) Schedule 8A makes further provision about trusts in respect of which an order is made under subsection (1).
- (6) Where an order is made under subsection (1) in relation to a trust, the Secretary of State must also make an order under section 65B(1) authorising the appointment of a trust special administrator in relation to the trust.

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- (7) The order under section 65B(1) must provide for the appointment to take effect at the same time as the order under this section.
- (8) Section 65B(2), (4) and (5) do not apply in relation to the order under section 65B(1).

## Consultation and report

### 65F Draft report

- (1) Within the period of 45 working days beginning with the day on which a trust special administrator's appointment takes effect, the administrator must provide to the Secretary of State and publish a draft report stating the action which the administrator recommends the Secretary of State should take in relation to the trust.
- (2) When preparing the draft report, the administrator must consult—
  - (a) any Strategic Health Authority in whose area the trust has hospitals, establishments or facilities, and
  - (b) any other person to which the trust provides goods or services under this Act and which the Secretary of State directs the administrator to consult.
- (3) After receiving the draft report, the Secretary of State must lay it before Parliament.

### 65G Consultation plan

- (1) At the same time as publishing a draft report under section 65F, a trust special administrator must publish a statement setting out the means by which the administrator will seek responses to the draft report.
- (2) The statement must specify a period of 30 working days within which the administrator seeks responses (the “consultation period”).
- (3) The first day of the consultation period must be within the period of 5 working days beginning with the day on which the draft report is published.

### 65H Consultation requirements

- (1) The following duties apply during the consultation period.
- (2) The trust special administrator must publish a notice stating that the administrator is seeking responses to the draft report and describing how people can give their responses.
- (3) A notice under subsection (2) must include details of how responses can be given in writing.
- (4) The trust special administrator must hold at least one meeting to seek responses from staff of the trust and from such persons as the trust special administrator may recognise as representing staff of the trust.

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- (5) The trust special administrator must hold at least one other meeting to seek responses from any person who wishes to attend, after publishing notice of the date, time and place of the meeting.
- (6) Notices under subsections (2) and (5) must be published at least once in the first 5 working days of the consultation period.
- (7) The trust special administrator must request a written response from—
  - (a) any Strategic Health Authority in whose area the trust has hospitals, establishments or facilities;
  - (b) any other person to which the trust provides goods or services under this Act, if required by directions given by the Secretary of State;
  - (c) any person within subsection (8), if required by directions given by the Secretary of State.
- (8) The persons within this subsection are—
  - (a) an overview and scrutiny committee of any authority to which section 244 applies;
  - (b) a committee of a local authority operating alternative arrangements under Part 2 of the Local Government Act 2000 which exercises functions corresponding to those of an overview and scrutiny committee under section 21(2)(f) of that Act;
  - (c) a joint overview and scrutiny committee;
  - (d) a committee established under section 247(1);
  - (e) a person carrying on, in pursuance of arrangements made by any local authority under subsection (1) of section 221 of the Local Government and Public Involvement in Health Act 2007, activities specified in subsection (2) of that section (local involvement networks);
  - (f) the member of Parliament for any constituency.
- (9) The trust special administrator must hold at least one meeting to seek responses from representatives of each of the persons from whom the administrator must request a written response under subsection (7)(a) or (b).
- (10) The Secretary of State may direct an administrator to—
  - (a) request a written response from any person;
  - (b) hold a meeting to seek a response from any person.
- (11) In subsection (4) “staff of the trust” means persons employed by the trust or otherwise working for the trust (whether as or on behalf of a contractor, as a volunteer or otherwise).

## **65I Final report**

- (1) Within the period of 15 working days beginning with the end of the consultation period, the trust special administrator must provide to the Secretary of State a final report stating the action which the administrator recommends that the Secretary of State should take in relation to the trust.
- (2) The administrator must attach to the final report a summary of all responses to the draft report which were received by the administrator in the period

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beginning with the publication of the draft report and ending with the last day of the consultation period.

- (3) After receiving the administrator's final report, the Secretary of State must publish it and lay it before Parliament.

### **65J Power to extend time**

- (1) This section applies to—
- (a) the duty of a trust special administrator to provide a draft report within the period specified in section 65F(1);
  - (b) the duty of a trust special administrator to consult in the consultation period specified under section 65G(2);
  - (c) the duty of a trust special administrator to provide a final report within the period specified in section 65I(1).
- (2) If the Secretary of State thinks it is not reasonable in the circumstances for the administrator to be required to carry out the duty within the specified period, the Secretary of State may by order extend the period.
- (3) If an order is made extending the period mentioned in subsection (1)(a) or (c) the trust special administrator must publish a notice stating the new date on which the period will expire.
- (4) If an order is made extending the period mentioned in subsection (1)(b) the trust special administrator must—
- (a) publish a notice stating the new date on which the period will expire, and
  - (b) publish a statement setting out the means by which the administrator will seek responses to the draft report during the extended consultation period.

#### Action by the Secretary of State

### **65K Secretary of State's decision**

- (1) Within the period of 20 working days beginning with the day on which the Secretary of State receives a final report under section 65I, the Secretary of State must decide what action to take in relation to the trust.
- (2) The Secretary of State must as soon as reasonably practicable—
- (a) publish a notice of the decision and of the reasons for it;
  - (b) lay a copy of the notice before Parliament.

### **65L Trusts coming out of administration**

- (1) This section applies if the Secretary of State decides under section 65K not to dissolve the trust.
- (2) The Secretary of State must make an order specifying a date when the appointment of the trust special administrator and the suspension of the chairman and directors of the trust come to an end.

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- (3) Subsections (4) and (5) apply in the case of a trust which is an NHS trust by virtue of an order made under section 65E(1).
- (4) The Secretary of State must make an order specifying, in relation to the trust, the matters mentioned in paragraph 5(1)(a) to (c) of Schedule 4 and, where the trust has a significant teaching commitment, the matters mentioned in paragraph 5(1)(d).
- (5) If it appears to the Secretary of State to be necessary in order to comply with provision made under subsection (4), or made by regulations under paragraph 4 of Schedule 4, the Secretary of State may by order—
  - (a) terminate the office of any executive or non-executive director of the trust;
  - (b) appoint a person to be an executive or non-executive director of the trust.

### Supplementary

#### **65M Replacement of trust special administrator**

- (1) If a trust special administrator ceases to hold office for any reason before the Secretary of State has made either an order under section 65L(2) or an order dissolving the trust, the Secretary of State must—
  - (a) appoint another person as the trust special administrator, and
  - (b) publish the name of the person appointed.
- (2) Where a person is appointed under subsection (1) in relation to a trust, anything done by or in relation to a previous trust special administrator has effect as if done by or in relation to that person, unless the Secretary of State directs otherwise.

#### **65N Guidance**

- (1) The Secretary of State must publish guidance for trust special administrators.
- (2) It must include guidance about the publication of notices under sections 65H and 65J.
- (3) It must include guidance about the preparation of draft reports, as to—
  - (a) persons to be consulted;
  - (b) factors to be taken into account;
  - (c) relevant publications.

#### **65O Interpretation of this Chapter**

In this Chapter—

“trust special administrator” means a person appointed under section 65B(6)(a) or section 65M(1)(a);

“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.”

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## 17 Trust special administrators: Primary Care Trusts

After section 65O of the National Health Service Act 2006 (c. 41) (inserted by section 16) insert—

### “CHAPTER 5B

#### TRUST SPECIAL ADMINISTRATORS: PRIMARY CARE TRUSTS

##### Appointment

### 65P Appointment of trust special administrator

- (1) The Secretary of State may give directions to a Primary Care Trust requiring the Primary Care Trust to appoint a trust special administrator to exercise on its behalf, to the extent, and subject to any conditions, specified in the directions, such provider functions of the Primary Care Trust as are specified in the directions.
- (2) Directions may be given under subsection (1) only if the Secretary of State considers it appropriate in the interests of the health service.
- (3) The directions must specify—
  - (a) the date when the appointment is to take effect, which must be within the period of 5 working days beginning with the day on which the directions are given, and
  - (b) the name of the person to be appointed.
- (4) Before giving directions under subsection (1) the Secretary of State must consult—
  - (a) the Primary Care Trust,
  - (b) any Strategic Health Authority whose area includes any part of the Primary Care Trust's area, and
  - (c) any other person to which the Primary Care Trust provides goods or services under this Act and which the Secretary of State considers it appropriate to consult.
- (5) The Secretary of State must lay before Parliament (with the instrument containing the directions) a report stating the reasons for giving the directions.
- (6) Where a person is appointed pursuant to directions under subsection (1), the Secretary of State must publish the name of the person appointed.
- (7) A person appointed as a trust special administrator holds and vacates office in accordance with the terms of the appointment.
- (8) Directions under subsection (1) may require the appointment to be on terms specified in the directions.
- (9) The Primary Care Trust may pay the trust special administrator remuneration and expenses in accordance with the terms of the appointment.
- (10) In this section “provider function” means—

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- (a) any function of providing goods or services except to the extent that at the time of the appointment there are arrangements between the Primary Care Trust and another person or body under which the goods or services are, or are to be, provided by that person or body, and
- (b) any function that is not a function of providing goods or services but that may be exercised for the purposes of a function within paragraph (a).

### **65Q Displacement of functions**

- (1) When the appointment of a trust special administrator takes effect, the relevant functions cease to be exercisable by any committee, sub-committee or officer of the Primary Care Trust by whom they were previously exercisable.
- (2) Subsection (1) does not affect the employment of any officer of the Primary Care Trust.
- (3) In this Chapter “relevant functions” means the functions of the Primary Care Trust exercisable by the trust special administrator.

#### Consultation and report

### **65R Draft report**

- (1) Within the period of 45 working days beginning with the day on which a trust special administrator's appointment takes effect, the administrator must provide to the Secretary of State and publish a draft report stating the action which the administrator recommends the Secretary of State should take in relation to the performance of the relevant functions.
- (2) When preparing the draft report, the administrator must consult—
  - (a) any Strategic Health Authority whose area includes any part of the Primary Care Trust's area, and
  - (b) any other person to which the Primary Care Trust provides goods or services under this Act, if required by directions given by the Secretary of State.
- (3) After receiving the draft report, the Secretary of State must lay it before Parliament.

### **65S Consultation plan**

- (1) At the same time as publishing a draft report under section 65R, a trust special administrator must publish a statement setting out the means by which the administrator will seek responses to the draft report.
- (2) The statement must specify a period of 30 working days within which the administrator seeks responses (the “consultation period”).
- (3) The first day of the consultation period must be within the period of 5 working days beginning with the day on which the draft report is published.

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## **65T Consultation requirements**

- (1) The following duties apply during the consultation period.
- (2) The trust special administrator must publish a notice stating that the administrator is seeking responses to the draft report and describing how people can give their responses.
- (3) A notice under subsection (2) must include details of how responses can be given in writing.
- (4) The trust special administrator must hold at least one meeting to seek responses from relevant staff and from such persons as the trust special administrator may recognise as representing relevant staff.
- (5) The trust special administrator must hold at least one other meeting to seek responses from any person who wishes to attend, after publishing notice of the date, time and place of the meeting.
- (6) Notices under subsections (2) and (5) must be published at least once in the first 5 working days of the consultation period.
- (7) The trust special administrator must request a written response from—
  - (a) any Strategic Health Authority in whose area any part of the Primary Care Trust's area falls;
  - (b) any other person to which the Primary Care Trust provides goods or services under this Act, if required by directions given by the Secretary of State;
  - (c) any person within section 65H(8), if required by directions given by the Secretary of State.
- (8) The trust special administrator must hold at least one meeting to seek responses from representatives of each of the persons from whom the administrator must request a written response under subsection (7)(a) and (b).
- (9) The Secretary of State may direct a trust special administrator to—
  - (a) request a written response from any person;
  - (b) hold a meeting to seek a response from any person.
- (10) In subsection (4) “relevant staff” means persons employed by the trust or otherwise working for the trust (whether as or on behalf of a contractor, as a volunteer or otherwise), wholly or partly in connection with the relevant functions.

## **65U Final report**

- (1) Within the period of 15 working days beginning with the end of the consultation period, the trust special administrator must provide to the Secretary of State a final report stating the action which the administrator recommends that the Secretary of State should take in relation to the performance of the relevant functions.
- (2) The administrator must attach to the final report a summary of all responses to the draft report which were received by the administrator in the period

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beginning with the publication of the draft report and ending with the last day of the consultation period.

- (3) After receiving the administrator's final report, the Secretary of State must publish it and lay it before Parliament.

### **65V Power to extend time**

- (1) This section applies to—
- (a) the duty of a trust special administrator to provide a draft report within the period specified in section 65R(1);
  - (b) the duty of a trust special administrator to consult in the consultation period specified under section 65S(2);
  - (c) the duty of a trust special administrator to provide a final report within the period specified in section 65U(1).
- (2) If the Secretary of State thinks it is not reasonable in the circumstances for the administrator to be required to carry out the duty within the specified period, the Secretary of State may by order extend the period.
- (3) If an order is made extending the period mentioned in subsection (1)(a) or (c) the trust special administrator must publish a notice stating the new date on which the period will expire.
- (4) If an order is made extending the period mentioned in subsection (1)(b) the trust special administrator must—
- (a) publish a notice stating the new date on which the period will expire, and
  - (b) publish a statement setting out the means by which the administrator will seek responses to the draft report during the extended consultation period.

Action by the Secretary of State

### **65W Secretary of State's decision**

- (1) Within the period of 20 working days beginning with the day on which the Secretary of State receives a final report under section 65U, the Secretary of State must decide what action to take in relation to the performance of the relevant functions.
- (2) The Secretary of State must as soon as reasonably practicable—
- (a) publish a notice of the decision and of the reasons for it;
  - (b) lay a copy of the notice before Parliament.

### **65X Removal of a trust special administrator**

The Secretary of State may at any time give directions to a Primary Care Trust and a trust special administrator who exercises functions on behalf of the Primary Care Trust, requiring that the appointment of the administrator should come to an end with effect from a specified day.

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## Supplementary

### **65Y Replacement of trust special administrator**

- (1) Where the Secretary of State has given directions under section 65P and, before the Secretary of State has published a decision under section 65W, the trust special administrator appointed under the directions (or whose appointment has effect as if made under the directions) ceases to hold office for any reason, the Secretary of State must—
  - (a) appoint another person as the trust special administrator, and
  - (b) publish the name of the person appointed.
- (2) An appointment under subsection (1) has effect as if made by the Primary Care Trust under the directions.
- (3) Where a person is appointed under subsection (1) in relation to a Primary Care Trust, anything done by or in relation to a previous trust special administrator has effect as if done by or in relation to that person, unless the Secretary of State directs otherwise.

### **65Z Secretary of State's directions to trust special administrator**

The Secretary of State may give directions to a trust special administrator about the exercise of functions under or by virtue of this Chapter.

#### **65Z1 Guidance**

- (1) The Secretary of State must publish guidance for trust special administrators.
- (2) It must include guidance about the publication of notices under sections 65T and 65V.
- (3) It must include guidance in relation to the preparation of draft reports, as to—
  - (a) persons to be consulted;
  - (b) factors to be taken into account;
  - (c) relevant publications.

#### **65Z2 Directions**

Directions under the following provisions of this Chapter must be laid before Parliament after they are given—

- (a) section 65P(1);
- (b) section 65X;
- (c) section 65Z.

#### **65Z3 Interpretation of this Chapter**

In this Chapter—

“relevant functions” has the meaning given in section 65Q(3);

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“trust special administrator” means a person appointed under directions under section 65P(1) or under section 65Y(1)(a);

“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.”

### Consequential amendments

#### 18 Trust special administrators: consequential amendments

- (1) The National Health Service Act 2006 (c. 41) is amended as follows.
- (2) Section 53 (voluntary arrangements for NHS foundation trusts) is amended as follows.
- (3) In subsection (1), after “NHS foundation trust” insert “  
to which this section applies”.
- (4) In subsection (2), after “NHS foundation trusts” insert “  
to which this section applies”.
- (5) After subsection (4) insert—  
  - “(4A) This section applies to an NHS foundation trust to which sections 52B to 52E and Chapter 5A do not apply.”
- (6) In section 54 (dissolution etc. of NHS foundation trusts), in subsection (1), after “NHS foundation trust” insert “  
to which section 53 applies”.
- (7) In section 242 (public involvement and consultation), at the end insert—  
  - “(6) This section does not require a body to make arrangements in relation to matters to which a trust special administrator's report or draft report under section 65F, 65I, 65R or 65U relates before the decision of the Secretary of State under section 65K or 65W has been published.”
- (8) In section 272 (orders, regulations, rules and directions)—  
  - (a) in subsection (4), for “and (6)” substitute “  
, (6) and (6A)”;
  - (b) in subsection (5), after paragraph (a) insert—  
    - “(aa) section 52D(1) or (7) or 52E(6),
    - (ab) section 65B(1), 65E(1), 65J(2), 65L(2), (4) or (5), or 65V(2),”;
  - (c) after subsection (6) insert—  
    - “(6A) A statutory instrument containing an order under section 52D(1), 52E(6), 65B(1), 65E(1), 65J(2), 65L(2) or (4) or 65V(2) must be laid before Parliament after it is made.”
- (9) In section 275(1) (interpretation), in the definition of “NHS trust”, at the end insert “  
and, subject to Schedule 8A, a body that becomes a National Health Service trust by virtue of an order made under section 52D(1) or 65E(1),”.
- (10) In paragraph 28(3) of Schedule 4 (NHS trusts established under section 25), after “as a matter of urgency” insert “  
or where the order is made following the publication of a final report under section 65I(3)”.

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(11) In Schedule 9 (NHS foundation trusts: transfer of staff), in paragraph 1 after “NHS foundation trust” insert “ to which section 53 applies”.

(12) In section 206(1) of the National Health Service (Wales) Act 2006 (c. 42) (interpretation), in the definition of “NHS trust”, at the end insert “ (including a body that becomes a National Health Service trust by virtue of an order made under section 52D(1) or 65E(1) of that Act)”.

## CHAPTER 2

### SUSPENSION

#### 19 NHS and other health appointments: suspension

Schedule 3 (which amends enactments to provide for powers of suspension in relation to chairs, vice-chairs and other members of NHS bodies and other bodies concerned with health) has effect.

## PART 3

### MISCELLANEOUS

#### Tobacco

#### 20 Prohibition of advertising: exclusion for specialist tobacconists

In section 6 of the Tobacco Advertising and Promotion Act 2002 (c. 36) (specialist tobacconists), before subsection (1) insert—

“(A1) The appropriate Minister may provide in regulations that no offence is committed under section 2 if the tobacco advertisement—

- (a) is in, or fixed to the outside of premises of, a specialist tobacconist in England and Wales or Northern Ireland,
- (b) is not for cigarettes or hand-rolling tobacco, and
- (c) complies with any requirements specified in the regulations.”

#### Annotations:

#### Commencement Information

I4 S. 20 partly in force; s. 20 in force for specified purposes at Royal Assent see s. 40(6)(b)

#### 21 Prohibition of tobacco displays etc

After section 7 of the Tobacco Advertising and Promotion Act 2002 (developments in technology) insert—

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*Status: This version of this Act contains provisions that are prospective.*

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### **“7A Prohibition of tobacco displays**

- (1) A person who in the course of a business displays tobacco products, or causes tobacco products to be displayed, in a place in England and Wales or Northern Ireland is guilty of an offence.
- (2) The appropriate Minister may by regulations provide for the meaning of “place” in this section.
- (3) The appropriate Minister may by regulations make provision for a display in a place which also amounts to an advertisement to be treated for the purposes of offences in England and Wales or Northern Ireland under this Act—
  - (a) as an advertisement and not as a display, or
  - (b) as a display and not as an advertisement.

### **7B Tobacco displays: exclusions and defence**

- (1) No offence is committed under section 7A if—
  - (a) the tobacco products are displayed in the course of a business which is part of the tobacco trade,
  - (b) they are displayed for the purposes of that trade, and
  - (c) the display is accessible only to persons who are engaged in, or employed by, a business which is also part of that trade.
- (2) No offence is committed under section 7A if the display is a requested display to an individual aged 18 or over.
- (3) The appropriate Minister may provide in regulations that no offence is committed under section 7A if the display complies with requirements specified in the regulations.
- (4) Subsections (5) and (7) apply where a person (“D”) is charged with an offence under section 7A in a case where the display is a requested display to an individual aged under 18.
- (5) Where D is charged by reason of D having displayed the tobacco product it is a defence that—
  - (a) D believed that the individual was aged 18 or over, and
  - (b) either—
    - (i) D had taken all reasonable steps to establish the individual's age, or
    - (ii) from the individual's appearance nobody could reasonably have suspected that the individual was aged under 18.
- (6) For the purposes of subsection (5), a person is treated as having taken all reasonable steps to establish an individual's age if—
  - (a) the person asked the individual for evidence of the individual's age, and
  - (b) the evidence would have convinced a reasonable person.
- (7) Where D is charged by reason of D having caused the display of the tobacco product it is a defence that D exercised all due diligence to avoid committing the offence.

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- (8) In this section “a requested display” means a display to an individual following a particular request by the individual to purchase a tobacco product, or for information about a tobacco product.

#### **7C Displays: prices of tobacco products**

- (1) The appropriate Minister may by regulations make provision imposing requirements in relation to the display in a place in England and Wales or Northern Ireland in the course of a business of prices of tobacco products.
- (2) A person who displays or causes to be displayed prices of tobacco products in breach of a requirement contained in the regulations is guilty of an offence.
- (3) The regulations may, in particular, provide for the meaning of “place” in this section.
- (4) The regulations may make provision for a display of prices in a place which also amounts to an advertisement to be treated for the purposes of offences in England and Wales or Northern Ireland under this Act—
- (a) as an advertisement and not as a display of prices, or
  - (b) as a display of prices and not as an advertisement.

#### **7D Displays on a website**

- (1) The Secretary of State may by regulations make provision imposing requirements in relation to the display in England and Wales or Northern Ireland in the course of a business of tobacco products or their prices on a website where tobacco products are offered for sale.
- (2) A person who displays or causes to be displayed tobacco products or their prices in breach of a requirement contained in the regulations is guilty of an offence.
- (3) A service provider established in England and Wales or Northern Ireland is guilty of an offence if, in the course of providing information society services, the provider does anything in an EEA State other than the United Kingdom which, if done in England and Wales or Northern Ireland, would constitute an offence under subsection (2).
- (4) Nothing in subsection (2) makes it an offence for a service provider established outside the United Kingdom to do anything in the course of providing information society services.
- (5) The regulations may make provision for a relevant display of tobacco products or their prices which also amounts to an advertisement to be treated for the purposes of offences in England and Wales or Northern Ireland under this Act—
- (a) as an advertisement and not as a display, or
  - (b) as a display and not as an advertisement.
- (6) In subsection (5) a “relevant display” means a display on a website where tobacco products are offered for sale.”

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#### Annotations:

#### Commencement Information

**I5** S. 21 partly in force; s. 21 in force for specified purposes at Royal Assent see s. 40(6)(b)

## 22 Power to prohibit sales from vending machines

- (1) After section 3 of the Children and Young Persons (Protection from Tobacco) Act 1991 (c. 23) (sale of unpackaged cigarettes) insert—

### “3A Sales from vending machines in England and Wales

- (1) The appropriate national authority may by regulations make provision prohibiting the sale of tobacco from an automatic machine in England and Wales.
- (2) The regulations must make provision as to the persons who are liable in the case of any breach of a prohibition.
- (3) Where a prohibition contained in the regulations is breached, any person liable in accordance with the regulations is guilty of an offence.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (5) Sections 13, 14 and 15 of the Tobacco Advertising and Promotion Act 2002 (enforcement etc.) apply for the purposes of this section and regulations made under it as they apply for the purposes of provisions of that Act.
- (6) The power of the appropriate national authority to make regulations under this section—
  - (a) is exercisable by statutory instrument,
  - (b) may be exercised to make different provision for different cases or circumstances, and
  - (c) includes power to make supplementary, incidental, consequential or transitional provision.
- (7) A statutory instrument containing regulations made under this section may not be made—
  - (a) 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, and
  - (b) by the Welsh Ministers unless a draft of the instrument has been laid before, and approved by a resolution of, the National Assembly for Wales.
- (8) In this section—
 

“the appropriate national authority”—

  - (a) in relation to England, means the Secretary of State; and
  - (b) in relation to Wales, means the Welsh Ministers;

“tobacco” has the same meaning as in section 7 of the Children and Young Persons Act 1933.”

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- (2) In section 12D(1) of the Children and Young Persons Act 1933 (c. 12) (restricted premises orders and restricted sales orders: interpretation)—
- (a) omit “or” at the end of paragraph (a);
  - (b) after paragraph (b) insert “, or
  - (c) an offence committed under section 3A of the Children and Young Persons (Protection from Tobacco) Act 1991 in respect of any machine kept on any premises (which are accordingly “the premises in relation to which the offence is committed”).”

**Annotations:**

**Commencement Information**

**I6** S. 22 partly in force; s. 22 in force for specified purposes at Royal Assent see s. 40(6)(b)

**23 Power to prohibit sales from vending machines: Northern Ireland**

After article 4 of the Children and Young Persons (Protection from Tobacco) (Northern Ireland) Order 1991 (S.I. 1991/2872 (N.I. 25)) (sale of unpackaged cigarettes) insert—

**“4A Sales from vending machines**

- (1) The Department may by regulations make provision prohibiting the sale of tobacco from an automatic machine.
- (2) The regulations must make provision as to the persons who are liable in the case of any breach of a prohibition.
- (3) Where a prohibition contained in the regulations is breached, any person liable in accordance with the regulations is guilty of an offence.
- (4) A person guilty of an offence under this Article is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (5) Sections 13, 14 and 15 of the Tobacco Advertising and Promotion Act 2002 (enforcement etc.) apply for the purposes of this Article and regulations made under it as they apply for the purposes of provisions of that Act.
- (6) The power to make regulations under this Article includes power to make supplementary, incidental, consequential or transitional provision.
- (7) Regulations may not be made under this Article unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.
- (8) In this Article “tobacco” has the same meaning as in Part 2 of the Health and Personal Social Services (Northern Ireland) Order 1978.”

**Annotations:**

**Commencement Information**

**I7** S. 23 partly in force; s. 23 in force for specified purposes at Royal Assent see s. 40(6)(b)

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## 24 Tobacco: minor and consequential amendments

Schedule 4 (which makes minor and consequential amendments relating to the advertising and promotion of tobacco products) has effect.

### Annotations:

#### Commencement Information

- I8** S. 24 partly in force; s. 24 in force for specified purposes at Royal Assent and in force for further specified purposes at 12.1.2010 see s. 40(5)(a)(6)(c)(7)(b)(c)(8)

PROSPECTIVE

### Pharmaceutical services in England

## 25 Pharmaceutical needs assessments

After section 128 of the National Health Service Act 2006 (c. 41) insert—

### “128A Pharmaceutical needs assessments

- (1) Each Primary Care Trust must in accordance with regulations—
  - (a) assess needs for pharmaceutical services in its area, and
  - (b) publish a statement of its first assessment and of any revised assessment.
- (2) The regulations must make provision—
  - (a) as to information which must be contained in a statement;
  - (b) as to the extent to which an assessment must take account of likely future needs;
  - (c) specifying the date by which a Primary Care Trust must publish the statement of its first assessment;
  - (d) as to the circumstances in which a Primary Care Trust must make a new assessment.
- (3) The regulations may in particular make provision—
  - (a) as to the pharmaceutical services to which an assessment must relate;
  - (b) requiring a Primary Care Trust to consult specified persons about specified matters when making an assessment;
  - (c) as to the manner in which an assessment is to be made;
  - (d) as to matters to which a Primary Care Trust must have regard when making an assessment.”

## 26 New arrangements for entry to pharmaceutical list

- (1) Section 129 of the National Health Service Act 2006 (regulations as to pharmaceutical services) is amended as follows.
- (2) In subsection (2)(c), for the words from “may be granted” to “specified in the application,” substitute “must be granted if the Primary Care Trust is”

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satisfied as mentioned in subsection (2A), and may otherwise be granted only if the Primary Care Trust is satisfied as mentioned in subsection (2B),”.

(3) After subsection (2) insert—

“(2A) The Primary Care Trust is satisfied as mentioned in this subsection if, having regard to its needs statement and to any matters prescribed by the Secretary of State in the regulations, it is satisfied that it is necessary to grant the application in order to meet a need in its area for the services or some of the services specified in the application.

(2B) The Primary Care Trust is satisfied as mentioned in this subsection if, having regard to its needs statement and to any matters prescribed by the Secretary of State in the regulations, it is satisfied that to grant the application would secure improvements, or better access, to pharmaceutical services in its area.

(2C) In relation to cases where the Primary Care Trust is satisfied as mentioned in subsection (2B), the regulations may make provision as to—

- (a) the manner in which the Primary Care Trust is to determine whether to grant the application,
- (b) matters which the Primary Care Trust must or must not take into account for the purpose of determining whether to grant the application.”

(4) After subsection (3) insert—

“(3A) The regulations may prescribe circumstances in which two or more applications referred to in subsection (2)(c)(i) or (ii) may be considered together by the Primary Care Trust.”

(5) In subsection (4)—

- (a) for the words from “include” to “subsection (5) for” substitute “make provision for the Primary Care Trust to take into account prescribed matters in”;
- (b) omit paragraph (a);
- (c) in paragraph (b), for “they” substitute “two or more applications referred to in subsection (2)(c)(i) or (ii)”;
- (d) in paragraph (c), for “subsection (2)(c)” substitute “subsection (2A) or (2B)”.

(6) After subsection (4) insert—

“(4A) Regulations under subsection (4) may in particular make the provision mentioned in subsection (5), with or without modifications.”

(7) In subsection (6), before paragraph (a) insert—

“(za) for the circumstances and manner in which a Primary Care Trust may invite applications for inclusion in a pharmaceutical list,”.

(8) After subsection (10) insert—

“(10A) Primary Care Trusts must give reasons for decisions made by virtue of this section.

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(10B) In this section a “needs statement” means the statement required by section 128A(1)(b) as most recently published by the relevant Primary Care Trust.”

**27 Pharmaceutical lists: minor amendment**

In section 129(6) of the National Health Service Act 2006 (c. 41) (regulations as to pharmaceutical services), in paragraph (d), for “such an application” substitute “an application to a Primary Care Trust”.

**28 Breach of terms of arrangements: notices and penalties**

In Part 7 of the National Health Service Act 2006, before Chapter 6 (disqualification) insert—

**“CHAPTER 5A**

NOTICES AND PENALTIES

**150A Notices and penalties**

- (1) The Secretary of State may by regulations provide that where a practitioner who provides pharmaceutical services under arrangements with a Primary Care Trust breaches a term of those arrangements, the Primary Care Trust may—
  - (a) by a notice require the practitioner to do, or not do, specified things or things of a specified description within a specified period, or
  - (b) in prescribed circumstances or for a prescribed period, withhold all or part of a payment due to the practitioner under the arrangements.
- (2) Regulations under this section must include provision conferring on such persons as may be prescribed rights of appeal from decisions of Primary Care Trusts made by virtue of this section.
- (3) In this section—
 

“practitioner” means a person included in a pharmaceutical list, and  
“specified” means specified in a notice under paragraph (a) of subsection (1).”

**29 LPS schemes: powers of Primary Care Trusts and Strategic Health Authorities**

- (1) The National Health Service Act 2006 is amended as follows.
- (2) In section 15 (Strategic Health Authorities' directions), in subsection (2), after “section 107 arrangements” insert “or LPS schemes””.
- (3) In section 16 (section 92 arrangements and section 107 arrangements)—
  - (a) in subsection (1), after “section 107 arrangements” insert “and LPS schemes””;
  - (b) in the heading, after “section 107 arrangements” insert “and LPS schemes””.

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- (4) In section 144 (local pharmaceutical services schemes), after “Primary Care Trusts” insert “ or Strategic Health Authorities”.
- (5) Schedule 12 (LPS schemes) is amended as follows.
- (6) Paragraph 1 is amended as follows.
- (7) In sub-paragraph (1), after “Primary Care Trusts” insert “ or Strategic Health Authorities”.
- (8) In sub-paragraph (2)—
  - (a) in paragraph (a), after “Primary Care Trust” insert “ or Strategic Health Authority (the “commissioning body”)”
  - (b) in paragraph (b), for “Primary Care Trust),” substitute “ commissioning body).”;
  - (c) omit paragraph (c) and the word “and” immediately before it.
- (9) After sub-paragraph (2) insert—
  - “(2A) A Strategic Health Authority may establish an LPS scheme only where the only other parties are Primary Care Trusts.
  - (2B) A Primary Care Trust may provide local pharmaceutical services under an LPS scheme (where it is not the commissioning body), but only in prescribed circumstances.”
- (10) In sub-paragraph (5), for “made by it” substitute “ in its area”.
- (11) In sub-paragraph (6), for “and an NHS foundation trust” substitute “ , an NHS foundation trust and a Primary Care Trust”.
- (12) In paragraph 2, in sub-paragraph (1), after “Primary Care Trust” insert “ or Strategic Health Authority”.
- (13) Paragraph 3 is amended as follows.
- (14) In sub-paragraph (2), for “Primary Care Trusts” substitute “ the commissioning body”.
- (15) In sub-paragraph (3)(k), after “Primary Care Trusts” insert “ or Strategic Health Authorities”.

PROSPECTIVE

## Pharmaceutical services in Wales

### 30 Pharmaceutical lists: minor amendment

In section 83(6) of the National Health Service (Wales) Act 2006 (c. 42) (regulations as to pharmaceutical services), in paragraph (d), for “such an application” substitute “ an application to a Local Health Board”.

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### **31 Breach of terms of arrangements: notices and penalties**

- (1) In Part 8 of the National Health Service (Wales) Act 2006, before Chapter 2 (disqualification) insert—

#### **“CHAPTER 1A**

#### **NOTICES AND PENALTIES**

##### **106A Notices and penalties**

- (1) The Welsh Ministers may by regulations provide that where a practitioner who provides pharmaceutical services or general ophthalmic services under arrangements with a Local Health Board breaches a term of those arrangements, the Local Health Board may—
- (a) by a notice require the practitioner to do, or not do, specified things or things of a specified description within a specified period, or
  - (b) in prescribed circumstances or for a prescribed period, withhold all or part of a payment due to the practitioner under the arrangements.
- (2) Regulations under this section must include provision conferring on such persons as may be prescribed rights of appeal from decisions of Local Health Boards made by virtue of this section.
- (3) In this section—
- “practitioner” means a person included in an ophthalmic list or a pharmaceutical list, and
- “specified” means specified in a notice under paragraph (a) of subsection (1).”
- (2) In section 107(9) of that Act, after “included in” insert “ an ophthalmic list or”.

### **32 LPS schemes: powers of Local Health Boards**

- (1) Schedule 7 to the National Health Service (Wales) Act 2006 (c. 42) (LPS schemes) is amended as follows.
- (2) In paragraph 1, in sub-paragraph (2)—
- (a) in paragraph (a), after “Local Health Board” insert “ (the “commissioning body”)
  - (b) in paragraph (b), for “Local Health Board),” substitute “ commissioning body).”;
  - (c) omit paragraph (c) and the word “and” immediately before it.
- (3) After sub-paragraph (2) insert—
- “(2A) A Local Health Board may provide local pharmaceutical services under an LPS scheme (where it is not the commissioning body), but only in prescribed circumstances.”
- (4) In sub-paragraph (6), for “and an NHS foundation trust” substitute “ , an NHS foundation trust and a Local Health Board”.

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(5) In paragraph 3(2), for “Local Health Boards” substitute “ the commissioning body”.

PROSPECTIVE

#### Private patient income

### 33 Private patient income of mental health foundation trusts

(1) Section 44 of the National Health Service Act 2006 (c. 41) (private health care) is amended as follows.

(2) In subsection (2)—

(a) after “not greater than” insert “ — (a)”;

(b) at the end insert “, or

(b) in the case of a mental health foundation trust designated under subsection (2A), that proportion or 1.5% if greater.”

(3) After subsection (2) insert—

“(2A) An authorisation of an NHS foundation trust which was an NHS trust must designate it as a mental health foundation trust for the purposes of this section if it appears to the regulator that it provides goods or services only or mainly for the prevention, diagnosis or treatment of any disorder or disability of the mind or for the benefit in any other way of people suffering from a disorder or disability of the mind.”

#### Optical appliances

### 34 Payments in respect of costs of optical appliances

Section 180(2)(c) of the National Health Service Act 2006 (payments in respect of costs of optical appliances for persons aged 60 or over) is omitted.

PROSPECTIVE

#### Adult social care

### 35 Investigation of complaints about privately arranged or funded adult social care

Schedule 5 (which inserts a new Part 3A into the Local Government Act 1974 (c. 7) to give the Commission for Local Administration in England powers to investigate complaints about privately arranged or funded adult social care and which makes consequential amendments) has effect.

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PROSPECTIVE

## Disclosure of information

### **36 Disclosure of information by Her Majesty's Revenue and Customs**

- (1) This section applies to information held by Her Majesty's Revenue and Customs for the purposes of functions relating to income tax.
- (2) Information to which this section applies may be disclosed by Her Majesty's Revenue and Customs to the persons listed in subsection (3) for use for the purposes of functions in connection with the analysis or dissemination of information relating to the income or expenses of dental practitioners or general medical practitioners.
- (3) The persons are—
  - (a) the Secretary of State;
  - (b) the Welsh Ministers;
  - (c) the Scottish Ministers;
  - (d) the Department of Health, Social Services and Public Safety in Northern Ireland;
  - (e) persons providing services to or exercising functions on behalf of any of those persons.
- (4) Information may be disclosed under this section only in the form of a summary or collection of information so framed as not to enable information relating to a particular person to be ascertained from it.
- (5) In this section—
 

“dental practitioner” means a person registered in the dentists register under the Dentists Act 1984 (c. 24);

“general medical practitioner” means a person registered in the General Practitioner Register kept by the General Medical Council.

## PART 4

### GENERAL

### **37 Power to make transitional and consequential provision etc**

- (1) The Secretary of State may by order make—
  - (a) such transitional or transitory provisions or savings as the Secretary of State considers appropriate in connection with the coming into force of any provision of this Act;
  - (b) such supplementary, incidental or consequential provision as the Secretary of State considers appropriate for the purposes of, in consequence of, or for giving full effect to, any provision of this Act.
- (2) Subsection (1)(a) does not apply to—

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- (a) section 19 and Schedule 3, so far as they relate to amendments of the National Health Service (Wales) Act 2006 (c. 42);
  - (b) sections 20 to 24 and Schedule 4, so far as they relate to Wales or Northern Ireland;
  - (c) sections 30 to 32.
- (3) The Welsh Ministers may by order make such transitional or transitory provisions or savings as the Welsh Ministers consider appropriate in connection with the coming into force of—
  - (a) section 19 and Schedule 3, so far as they relate to amendments of the National Health Service (Wales) Act 2006;
  - (b) sections 20 to 24 and Schedule 4, so far as they relate to Wales;
  - (c) sections 30 to 32.
- (4) The Department of Health, Social Services and Public Safety in Northern Ireland may by order make such transitional or transitory provisions or savings as the Department considers appropriate in connection with the coming into force of sections 20 to 24 and Schedule 4, so far as they relate to Northern Ireland.
- (5) An order under this section may amend, repeal, revoke or otherwise modify any enactment.
- (6) An order under this section may, in particular, provide for any provision of this Act which comes into force before another such provision has come into force to have effect, until that other provision has come into force, with such modifications as are specified in the order.
- (7) The power to make an order under subsection (1) or (3) is exercisable by statutory instrument.
- (8) The power to make an order under subsection (4) is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).
- (9) A statutory instrument containing an order under subsection (1)—
  - (a) if it amends or repeals an enactment contained in an Act of Parliament, may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament;
  - (b) in any other case, is subject to annulment in pursuance of a resolution of either House of Parliament.
- (10) A statutory instrument containing an order under subsection (3) is subject to annulment in pursuance of a resolution of the National Assembly for Wales.
- (11) A statutory rule containing an order under subsection (4) is subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.)).
- (12) In this section “enactment” means an enactment contained in, or in an instrument made under—
  - (a) an Act of Parliament,
  - (b) a Measure or Act of the National Assembly for Wales, or
  - (c) Northern Ireland legislation.

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### 38 Repeals and revocations

Schedule 6 (repeals and revocations) has effect.

#### Annotations:

#### Commencement Information

**I9** S. 38 partly in force; s. 38 in force for specified purposes at Royal Assent see s. 40(5)(b)(8)

### 39 Extent

- (1) Subject to the following provisions, this Act extends to England and Wales only.
- (2) Any amendment, repeal or revocation made by this Act has the same extent as the enactment amended, repealed or revoked.
- (3) The following extend to England and Wales, Scotland and Northern Ireland—
  - (a) section 36;
  - (b) this section and sections 37, 40 and 41;
  - (c) paragraph 19 of Schedule 3 (and section 19 so far as it relates to that paragraph);
  - (d) paragraphs 4(6) and 9(4) of Schedule 4 (and section 24 so far as it relates to those provisions).

### 40 Commencement

- (1) Subject to the following provisions, this Act comes into force on such day as the Secretary of State may by order made by statutory instrument appoint.
- (2) Subject to subsections (5) to (7), the following come into force on such day as the Welsh Ministers may by order made by statutory instrument appoint—
  - (a) section 19 and Schedule 3, so far as they relate to amendments of the National Health Service (Wales) Act 2006 (c. 42);
  - (b) sections 20 to 24 and Schedule 4, so far as they relate to Wales;
  - (c) sections 30 to 32.
- (3) Subject to subsections (5) to (7), sections 20 to 24 and Schedule 4, so far as they relate to Northern Ireland, come into force on such day as the Department of Health, Social Services and Public Safety in Northern Ireland may appoint by order made by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).
- (4) Different days may be appointed under subsections (1) to (3) for different purposes or different areas.
- (5) The following come into force on the day on which this Act is passed—
  - (a) paragraph 9(2) and (4) of Schedule 4;
  - (b) a repeal or revocation made by Schedule 6 connected to the repeal made by paragraph 9(2) of Schedule 4;
  - (c) this section and sections 37, 39 and 41.
- (6) The following come into force, for the purposes of making regulations, on the day on which this Act is passed—

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- (a) sections 8, 9(5) and 10;
  - (b) sections 20 to 23;
  - (c) paragraphs 11 and 12 of Schedule 4.
- (7) The following come into force at the end of the period of 2 months beginning with the day on which this Act is passed—
- (a) section 34;
  - (b) paragraphs 1, 4(3), (4) and (6), 5, 6(3), 7(2) and 9(3) of Schedule 4;
  - (c) paragraph 13 of that Schedule for the purposes of sections 8, 9 and 11 of the Tobacco Advertising and Promotion Act 2002 (c. 36).
- (8) Where any particular provision or provisions of a Schedule come into force in accordance with subsection (5), (6) or (7), the section introducing the Schedule also comes into force in accordance with that subsection so far as relating to the particular provision or provisions.
- (9) The Secretary of State must not make an order under subsection (1) which relates to amendments to the Medicines Act 1968 (c. 67) made by Schedule 3 unless the Secretary of State first consults the Department of Health, Social Services and Public Safety in Northern Ireland.
- (10) The Secretary of State must not make an order under subsection (1) which relates to amendments to the Health Protection Agency Act 2004 (c. 17) made by Schedule 3 unless the Secretary of State first consults—
- (a) the Welsh Ministers,
  - (b) the Scottish Ministers, and
  - (c) the Department of Health, Social Services and Public Safety in Northern Ireland.
- (11) The Secretary of State must not make an order under subsection (1) which relates to amendments made to Human Tissue Act 2004 (c. 30) by Schedule 3 unless the Secretary of State first consults—
- (a) the Welsh Ministers, and
  - (b) the Department of Health, Social Services and Public Safety in Northern Ireland.
- (12) The Secretary of State must not make an order under subsection (1) which relates to amendments made by Schedule 3 to Schedule 6 or 19 to the National Health Service Act 2006 (c. 41) unless the Secretary of State first consults the Welsh Ministers.
- (13) The Welsh Ministers must not make an order under subsection (2)(a) unless they first consult the Secretary of State.

#### **41 Short title**

This Act may be cited as the Health Act 2009.

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## SCHEDULES

PROSPECTIVE

### SCHEDULE 1

Section 13

#### DIRECT PAYMENTS: MINOR AND CONSEQUENTIAL AMENDMENTS

##### National Assistance Act 1948 (c. 29)

- 1** In section 24 of the National Assistance Act 1948 (authority liable for provision of accommodation), after subsection (6A) insert—

“(6B) The reference in subsection (6A)(b) to accommodation provided by a Primary Care Trust includes a reference to accommodation—

- (a) in respect of which direct payments are made under regulations under section 12A(4) of the National Health Service Act 2006, and
- (b) which would be provided under section 117 of the Mental Health Act 1983 apart from the regulations.”

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

- 2** In section 63(2)(bb) of the Health Services and Public Health Act 1968 (provision of instruction for certain persons), after “pilot scheme” insert “ established under section 134(1) of the National Health Service Act 2006 or under section 92(1) of the National Health Service (Wales) Act 2006”.

##### Mental Health Act 1983 (c. 20)

- 3** In section 117 of the Mental Health Act 1983 (after-care), after subsection (2B) insert—

“(2C) References in this Act to after-care services provided for a patient under this section include references to services provided for the patient—

- (a) in respect of which direct payments are made under regulations under section 57 of the Health and Social Care Act 2001 or section 12A(4) of the National Health Service Act 2006, and
- (b) which would be provided under this section apart from the regulations.”

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

- 4** In section 2 of the Disabled Persons (Services, Consultation and Representation) Act 1986 (rights of authorised representatives of disabled persons), in subsection (5), after paragraph (a) insert—

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“(aa) in hospital accommodation in respect of the provision of which direct payments are made under section 12A(1) of the National Health Service Act 2006, or”.

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

- 5 (1) In section 45 of the Health and Social Care (Community Health and Standards) Act 2003 (quality in health care), after subsection (3) insert—

“(4) In this Chapter references to the provision of health care for a body include in the case of an English NHS body references to the provision of health care in respect of which direct payments are made by that body under section 12A(1), or under regulations under section 12A(4), of the National Health Service Act 2006.”

- (2) This paragraph has effect until the amendments made by paragraphs 37 and 38 of Schedule 5 to the Health and Social Care Act 2008 (c. 14) come fully into force.

National Health Service Act 2006 (c. 41)

- 6 The National Health Service Act 2006 is amended as follows.

- 7 In the following provisions, after “pilot scheme” insert “ established under section 134(1) of this Act”

- (a) section 80(5)(d);
- (b) section 80(7)(d);
- (c) section 173(1)(b);
- (d) section 234(1)(b).

- 8 In section 134 (pilot schemes for local pharmaceutical services), in subsection (2) for “Act” substitute “ Part”.

- 9 In section 246(3) (power to amend in relation to exempt information for purposes of overview and scrutiny committees), before “or” at the end of paragraph (a) insert “ or services in respect of which direct payments under section 12A(1), or under regulations under section 12A(4), are made by a relevant body,”.

- 10 In section 272(6) (instruments not to be made unless laid in draft and approved by resolution of each House), before paragraph (a) insert—

“(za) an order under section 12C(8) or (10),”.

- 11 In section 276 (index of defined expressions) omit the entry for “pilot scheme”.

Safeguarding Vulnerable Groups Act 2006 (c. 47)

- 12 The Safeguarding Vulnerable Groups Act 2006 is amended as follows.

- 13 In section 6 (regulated activity providers), after subsection (8B) insert—

“(8C) The Secretary of State does not make arrangements for another to engage in a regulated activity by virtue of anything the Secretary of State does under section 12A or 12D, or regulations under section 12B, of the National Health Service Act 2006 (direct payments for health services).

(8D) A Primary Care Trust does not make arrangements for another to engage in a regulated activity by virtue of anything the Primary Care Trust does under

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regulations under section 12A(4) or 12B of the National Health Service Act 2006 (direct payments for after-care services).”

- 14** (1) Section 21 (controlled activity relating to children) is amended as follows.
- (2) In subsection (5)(a), after “the Children Act 1989 (c. 41)” insert “ or section 12A(1), or regulations under section 12A(4), of the National Health Service Act 2006,”.
- (3) In subsection (8), after paragraph (a) insert—
- “(aa) out of direct payments made under section 12A(1), or under regulations under section 12A(4), of the National Health Service Act 2006,”.
- 15** (1) Section 59(1) (vulnerable adults) is amended as follows.
- (2) Omit “or” at the end of paragraph (i).
- (3) After paragraph (i) insert—
- “(ia) payments are made to him (or to another on his behalf) under section 12A(1), or under regulations under section 12A(4), of the National Health Service Act 2006, or”.

PROSPECTIVE

## SCHEDULE 2

Section 15(2)

### DE-AUTHORISED NHS FOUNDATION TRUSTS

After Schedule 8 to the National Health Service Act 2006 (c. 41) insert—

### “SCHEDULE 8A

Sections 52D and 65E

### DE-AUTHORISED NHS FOUNDATION TRUSTS

#### Introductory

- 1** (1) This Schedule applies to a body which is an NHS trust by virtue of an order made under section 52D(1) or 65E(1) (a “de-authorisation order”).
- (2) In this Schedule “the NHS foundation trust” means the body as it was constituted immediately before the order was made.

#### Replacement of constitution

- 2** (1) The constitution of the body pursuant to paragraph 1(1) of Schedule 7 ceases to have effect.
- (2) The body ceases to have members and a board of governors.
- (3) Subject to the following provisions of this Schedule, this Act applies in relation to the body as it applies in relation to an NHS trust established by an order made under section 25.

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- 3** Nothing in this Chapter affects the continuity of the body or of its property or liabilities (including its criminal liabilities).

#### Board of directors

- 4** (1) This paragraph is subject to any provision made under section 52D(4) or (7) or 65L(4) or (5).
- (2) The number of executive directors and non-executive directors of the NHS trust is the number of executive directors and non-executive directors provided for in the constitution of the NHS foundation trust.
- (3) On the de-authorisation order taking effect, the persons who were the chairman and executive and non-executive directors of the NHS foundation trust become, for the unexpired terms of their appointments, the chairman and executive and non-executive directors of the NHS trust.

#### Name and functions

- 5** (1) This paragraph applies only to a body which is an NHS trust by virtue of an order made under section 65E(1), and is subject to any provision made under section 65L(4).
- (2) “NHS trust” is substituted for “NHS foundation trust” in the name of the body.
- (3) The functions of the NHS trust (to be undertaken from the day on which the de-authorisation order takes effect) are to provide goods and services for the purposes of the health service.

#### Trustees

- 6** Any order appointing trustees for the NHS foundation trust has effect as an order under paragraph 10 of Schedule 4 appointing trustees for the NHS trust.

#### Public dividend capital

- 7** (1) The amount which was the public dividend capital of the NHS foundation trust continues as public dividend capital of the NHS trust held on the same conditions.
- (2) That is subject to any determination under paragraph 1(6) of Schedule 5.
- (3) Paragraph 1(1) of that Schedule does not apply.

#### Accounts

- 8** (1) The accounting date of the NHS trust is 31 March.
- (2) The first accounting period of the NHS trust begins with the first day of the financial year in which the de-authorisation order takes effect (and for that purpose the body is to be treated as having been an NHS trust with effect from that day).
- (3) But the Secretary of State may direct that the trust's first accounting period begins with the first day of the following financial year.
- (4) Paragraphs 24 and 25 of Schedule 7 apply to the body, as if it continued to be a public benefit corporation, in respect of any financial year before the NHS trust's first accounting period.

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### Contracts

- 9** (1) Nothing in this Act—
- (a) prevents the NHS trust continuing to be a party to a contract to which the NHS foundation trust was a party, or
  - (b) affects the rights or liabilities of any person under such a contract.
- (2) A contract to which the NHS foundation trust was a party and to which the NHS trust becomes a party is not an NHS contract by virtue of section 9(1).

### Other property

- 10** Nothing in this Act—
- (a) prevents the NHS trust continuing to hold property which the NHS foundation trust held, or
  - (b) affects the rights or liabilities of any person in respect of that property.

### Membership of bodies corporate

- 11** Nothing in this Act—
- (a) prevents the NHS trust remaining a member of a body corporate of which the NHS foundation trust was a member, or
  - (b) affects the rights or liabilities of any person in respect of that membership.

### Directions

- 12** Paragraphs 9 to 11 do not affect the Secretary of State's powers to give directions under this Act.”

PROSPECTIVE

## SCHEDULE 3

Section 19

### NHS AND OTHER HEALTH APPOINTMENTS: SUSPENSION

#### PART 1

#### AMENDMENTS OF ENACTMENTS

#### Medicines Act 1968 (c. 67)

- 1** (1) In Schedule 1A to the Medicines Act 1968 (provisions relating to Commission on Human Medicine and Committees), paragraph 6 is amended as follows.
- (2) At the beginning, insert “ (1)”.
  - (3) At the end insert—

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“(2) Regulations made under sub-paragraph (1) may include such incidental, supplemental, consequential or transitional provision as appears to the Ministers to be expedient.”

Licensing (Alcohol Education and Research) Act 1981 (c. 28)

- 2** (1) Schedule 1 to the Licensing (Alcohol Education and Research Act) 1981 (the Alcohol Education and Research Council) is amended as follows.
- (2) In paragraph 3(1), after “this paragraph” insert “ and paragraphs 3A and 3B”.
- (3) After paragraph 3 insert—
- “3A** The Secretary of State may suspend a member of the Council from office if it appears to him that one of the conditions in paragraph 3(5) is or may be satisfied in relation to the person.
- 3B** (1) This paragraph applies where the Secretary of State decides to suspend a member under paragraph 3A.
- (2) The Secretary of State must give notice to the member of the decision and the suspension takes effect on receipt by the member of the notice.
- (3) A notice under subsection (2) may be—
- (a) delivered in person, in which case the member is treated as receiving it when it is delivered, or
- (b) sent by first class post to the member's last known address, in which case the member is treated as receiving it on the third day after the day on which it was posted.
- (4) The initial period of suspension must not exceed 6 months.
- (5) The Secretary of State may review the member's suspension at any time.
- (6) The Secretary of State must review the member's suspension if requested in writing by the member to do so, but need not carry out a review less than 3 months after the beginning of the initial period of suspension.
- (7) Following a review the Secretary of State may—
- (a) revoke the suspension, or
- (b) suspend the member for another period of not more than 6 months from the expiry of the current period.
- (8) The Secretary of State must revoke the suspension if at any time—
- (a) he decides that none of the conditions mentioned in paragraph 3(5) is satisfied, or
- (b) he decides that any of those conditions is satisfied but does not remove the member from office.
- (9) A member who is suspended under paragraph 3A is to be disregarded at any time during the suspension in determining for the purposes of section 6(2) (minimum and maximum number of members of the Council) whether the Council has more than 15 members.”
- (4) In paragraph 4—
- (a) in sub-paragraph (1), after “this paragraph” insert “ and paragraph 4A”.

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(b) for sub-paragraph (4) substitute—

“(4) If the chairman is suspended from office as a member or ceases to be a member, he shall also be suspended from office as the chairman or (as the case may be) cease to be the chairman.”

(5) After paragraph 4 insert—

“**4A** (1) This paragraph applies where the chairman is suspended from office by virtue of paragraph 4(4).

(2) The Secretary of State may appoint a member as the interim chairman of the Council to exercise the chairman's functions.

(3) Subject to the provisions of this paragraph, the interim chairman shall hold and vacate his office in accordance with the terms of his appointment.

(4) Appointment as interim chairman shall be for a term not exceeding the shorter of—

(a) the period ending with either—

(i) the appointment of a new chairman, or

(ii) the revocation or expiry of the existing chairman's suspension; and

(b) the remainder of the interim chairman's term as a member of the Council.

(5) Previous service as chairman or interim chairman of the Council does not affect a person's eligibility for appointment as interim chairman.

(6) The interim chairman may resign his office by giving notice in writing to the Secretary of State.

(7) The Secretary of State may terminate the appointment of the interim chairman if he is satisfied that it would be in the best interests of the Council for another member to be the interim chairman.”

#### Human Fertilisation and Embryology Act 1990 (c. 37)

**3** (1) Schedule 1 to the Human Fertilisation and Embryology Act 1990 (the Human Fertilisation and Embryology Authority: supplementary provision) is amended as follows.

(2) In paragraph 5(1), after “this paragraph” insert “ and paragraphs 5A and 5B”.

(3) After paragraph 5 insert—

“**5A** The Secretary of State may suspend a member from office as chairman, deputy chairman or other member of the Authority if it appears to him that one of the conditions in paragraph 5(5) is or may be satisfied in relation to the member.

**5B** (1) This paragraph applies where the Secretary of State decides to suspend a member under paragraph 5A.

(2) The Secretary of State must give notice to the member of the decision and the suspension takes effect on receipt by the member of the notice.

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- (3) A notice under subsection (2) is treated as being received by the member—
  - (a) in a case where it is delivered in person or left at the member's proper address, at the time at which it is delivered or left;
  - (b) in a case where it is sent by post to the member at that address, on the third day after the day on which it was posted.
- (4) The initial period of suspension must not exceed 6 months.
- (5) The Secretary of State may review the member's suspension at any time.
- (6) The Secretary of State must review the member's suspension if requested in writing by the member to do so, but need not carry out a review less than 3 months after the beginning of the initial period of suspension.
- (7) Following a review the Secretary of State may—
  - (a) revoke the suspension, or
  - (b) suspend the member for another period of not more than 6 months from the expiry of the current period.
- (8) The Secretary of State must revoke the suspension if at any time—
  - (a) he decides that neither of the conditions mentioned in paragraph 5(5) is satisfied, or
  - (b) he decides that either of those conditions is satisfied but does not remove the member from office as chairman, deputy chairman or other member of the Authority.”

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

- 4 Schedule 1 to the Health Protection Agency Act 2004 (the Health Protection Agency) is amended as follows.
- 5 (1) Paragraph 1 is amended as follows.
  - (2) After sub-paragraph (3) insert—

“(3A) Where the membership of a non-executive member is suspended in accordance with any regulations made under paragraph 8(2)(d), that member's appointment is to be disregarded at any time during the suspension for the purpose of determining the appointments to be made under sub-paragraph (3).”
  - (3) After sub-paragraph (5) insert—

“(5A) But the Secretary of State may by regulations—
    - (a) provide that if the chairman's membership is suspended the Secretary of State may direct that the appointment of the deputy chairman under sub-paragraph (5) is to cease to have effect; and
    - (b) make provision about the appointment by the Secretary of State in those circumstances of another non-executive member to be deputy chairman.”
  - (4) In sub-paragraph (7), after “sub-paragraph” insert “ (5A) or”.
- 6 In paragraph 29, after sub-paragraph (2) insert—

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“(3) Regulations may include such incidental, supplemental, consequential or transitional provision as appears to the Secretary of State to be expedient.”

Human Tissue Act 2004 (c. 30)

7 In Schedule 2 to the Human Tissue Act 2004 (the Human Tissue Authority) after paragraph 9 insert—

- “9A The appointing authority may suspend a person from office as chairman or other member of the Authority if it appears to the appointing authority that one of the conditions in paragraph 9 is or may be satisfied in relation to the person.
- 9B (1) This paragraph applies where the appointing authority decides to suspend a person under paragraph 9A.
- (2) The appointing authority must give notice to the person of the decision and the suspension takes effect on receipt by the person of the notice.
- (3) A notice under subsection (2) may be—
- (a) delivered in person, in which case the person is treated as receiving it when it is delivered, or
  - (b) sent by first class post to the person's last known address, in which case the person is treated as receiving it on the third day after the day on which it was posted.
- (4) The initial period of suspension must not exceed 6 months.
- (5) The appointing authority may review the person's suspension at any time.
- (6) The appointing authority must review the person's suspension if requested in writing by the person to do so, but need not carry out a review less than 3 months after the beginning of the initial period of suspension.
- (7) Following a review the appointing authority may—
- (a) revoke the suspension, or
  - (b) suspend the person for another period of not more than 6 months from the expiry of the current period.
- (8) The appointing authority must revoke the suspension if at any time—
- (a) it decides that neither of the conditions mentioned in paragraph 9 is satisfied, or
  - (b) it decides that either of those conditions is satisfied but does not remove the person from office as chairman or other member of the Authority.
- (9) A person who is suspended under paragraph 9A is to be disregarded at any time during the suspension for the purposes of paragraph 1(1)(c) or (d).
- (10) In this paragraph “the appointing authority”, in relation to a person appointed as chairman or other member of the Authority, means the person who appointed him.
- 9C (1) This paragraph applies where a person is suspended from office as chairman under paragraph 9A.

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- (2) The Secretary of State may appoint a member of the Authority as the interim chairman to exercise the chairman's functions.
- (3) The Secretary of State may only appoint a member as the interim chairman if the member is not disqualified for being appointed as chairman by virtue of paragraph 2.
- (4) Subject to the following provisions of this paragraph, the interim chairman shall hold and vacate office in accordance with the terms of his appointment.
- (5) Appointment as interim chairman shall be for a term not exceeding the shorter of—
  - (a) the period ending with either—
    - (i) the appointment of a new chairman, or
    - (ii) the revocation or expiry of the existing chairman's suspension; and
  - (b) the remainder of the interim chairman's term as a member of the Authority.
- (6) Previous service as chairman or interim chairman of the Authority does not affect a person's eligibility for appointment as interim chairman.
- (7) A person holding office as interim chairman of the Authority may resign that office by giving notice in writing to the Secretary of State.
- (8) The Secretary of State may remove a person from office as interim chairman if he is satisfied that it would be in the best interests of the Authority for another member to be the interim chairman.”

Health Act 2006 (c. 28)

- 8** (1) In Schedule 4 to the Health Act 2006 (the Appointments Commission: supplementary) paragraph 6 is amended as follows.
- (2) At the beginning insert “ (1)”.
  - (3) At the end insert—

“(2) But regulations may—

    - (a) provide that if the chairman's membership is suspended the Secretary of State may direct that the appointment of the vice-chairman under sub-paragraph (1) ceases to have effect;
    - (b) make provision about the appointment by the Secretary of State in those circumstances of another non-executive member to be vice-chairman.”

National Health Service Act 2006 (c. 41)

- 9** The National Health Service Act 2006 is amended as follows.
- 10** In Schedule 2 (Strategic Health Authorities), for paragraph 9(d) substitute—

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- “(d) the circumstances in which the chairman or vice-chairman or any member of a Strategic Health Authority may be suspended from office.”
- 11** In Schedule 6 (Special Health Authorities), for paragraph 5(d) substitute—
- “(d) the circumstances in which the chairman or vice-chairman or any member of a Special Health Authority may be suspended from office.”
- 12** (1) Schedule 8 (Independent Regulator of NHS Foundation Trusts) is amended as follows.
- (2) In paragraph 2(2), after paragraph (b) insert—
- “(c) the Secretary of State may suspend him from office if it appears to the Secretary of State that there are or may be grounds to remove him from office under paragraph (b).”
- (3) After paragraph 2 insert—
- “**2A** (1) This paragraph applies where the Secretary of State decides to suspend a person under paragraph 2(2)(c).
- (2) The Secretary of State must give notice to the person of the decision and the suspension takes effect on receipt by the person of the notice.
- (3) A notice under subsection (2) may be—
- (a) delivered in person, in which case the person is treated as receiving it when it is delivered, or
- (b) sent by first class post to the person's last known address, in which case the person is treated as receiving it on the third day after the day on which it was posted.
- (4) The initial period of suspension must not exceed 6 months.
- (5) The Secretary of State may review the person's suspension at any time.
- (6) The Secretary of State must review the person's suspension if requested in writing by the person to do so, but need not carry out a review less than 3 months after the beginning of the initial period of suspension.
- (7) Following a review during any period of suspension, the Secretary of State may—
- (a) revoke the suspension, or
- (b) suspend the person for another period of not more than 6 months from the expiry of the current period.
- (8) The Secretary of State must revoke the suspension if at any time—
- (a) he decides that there are no grounds to remove the person from office under paragraph 2(2)(b), or
- (b) he decides that there are such grounds but does not remove the person from office under that provision.
- (9) A person who is suspended under paragraph 2(2)(c) is to be disregarded for the purposes of the maximum number of members under paragraph 1(1) at any time during the suspension.”
- 13** (1) Schedule 19 (further provision about standing advisory committees) is amended as follows.

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- (2) In paragraph 1(b), after “office” insert “ (including removal or suspension from office)”.
- (3) After paragraph 5 insert—
- “**5A** But regulations under paragraph 1(b) may make provision about the appointment by the Secretary of State of an interim chairman of a standing advisory committee in cases where the chairman elected under paragraph 5 is removed or suspended from office.”
- National Health Service (Wales) Act 2006 (c. 42)
- 14** The National Health Service (Wales) Act 2006 is amended as follows.
- 15** In Schedule 5 (Special Health Authorities established under section 22), for paragraph 5(d) substitute—
- “(d) the circumstances in which the chairman or vice-chairman or any member of a Special Health Authority may be suspended from office,”.
- 16** (1) Schedule 10 (further provision about community health councils) is amended as follows.
- (2) In paragraph 2(a), omit the words from “(including” to the end.
- (3) After paragraph 2 insert—
- “**2A** Regulations made under paragraph 2(a) may make provision about—
- (a) the election by members of a Council of a member to chair the Council, and
- (b) the appointment by the Welsh Ministers of a member to chair the Council on an interim basis in cases where the member so elected is removed or suspended from office.”
- 17** (1) Schedule 13 (further provision about standing advisory committees) is amended as follows.
- (2) In paragraph 1(b), after “office” insert “ (including removal or suspension from office)”.
- (3) After paragraph 5 insert—
- “**5A** But regulations under paragraph 1(b) may make provision about the appointment by the Welsh Ministers of an interim chairman of a standing advisory committee in cases where the chairman elected under paragraph 5 is removed or suspended from office.”

## PART 2

### SUPPLEMENTARY

#### Cross-border bodies

- 18** (1) In relation to a cross-border body—

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- (a) functions exercisable by the Secretary of State under the National Health Service Act 2006 (c. 41) by virtue of paragraph 11 or 13 are exercisable by the Welsh Ministers concurrently with the Secretary of State, and
  - (b) functions exercisable by the Welsh Ministers under the National Health Service (Wales) Act 2006 (c. 42) by virtue of paragraph 15 or 17 are exercisable by the Secretary of State concurrently with the Welsh Ministers.
- (2) In sub-paragraph (1) “cross-border body” has the same meaning as in the Government of Wales Act 2006 (c. 32).

Transitional provision

- 19** The amendments made by this Schedule apply in relation to a person appointed at any time (including a time before the coming into force of those amendments).

SCHEDULE 4

Section 24

TOBACCO: MINOR AND CONSEQUENTIAL AMENDMENTS

Children and Young Persons (Protection from Tobacco) Act 1991 (c. 23)

- 1** In section 5(3)(a) of the Children and Young Persons (Protection from Tobacco) Act 1991 (enforcement action by local authorities in England and Wales), after “district” insert “, county borough”.

Tobacco Advertising and Promotion Act 2002 (c. 36)

PROSPECTIVE

- 2** The Tobacco Advertising and Promotion Act 2002 is amended as follows.

PROSPECTIVE

- 3** (1) Section 6 (exclusion from advertising offence for specialist tobacconists) is amended as follows.
- (2) In subsection (1), at the end of paragraph (a), insert “ in Scotland”.
  - (3) In subsection (4), after “ “premises” in subsections” insert “ (A1),”.
- 4** (1) Section 8 (displays) is amended as follows.
- (2) In subsection (1), after “causes to be displayed” insert “ in Scotland”.
  - (3) After subsection (1) insert—
    - “(1A) A service provider established in Scotland is guilty of an offence if, in the course of providing information society services, the provider does anything in an EEA State other than the United Kingdom which, if done in Scotland, would constitute an offence under subsection (1).”

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(4) For subsection (2) substitute—

“(2) Nothing in subsection (1) makes it an offence for a service provider established outside the United Kingdom to do anything in the course of providing information society services.”

(5) In the heading, at the end insert “ : Scotland”.

(6) In relation to a time before section 21 of this Act comes fully into force the references to Scotland in subsection (1A) inserted into section 8 of the 2002 Act by subparagraph (3) are to be read as references to the United Kingdom.

**Annotations:**

**Commencement Information**

**I10** Sch. 4 para. 4 partly in force; Sch. 4 para.4(3)(4)(6) in force at 12.1.2010 see s. 40(7)(b)

5 (1) Section 9 (prohibition of free distributions) is amended as follows.

(2) After subsection (1) insert—

“(1A) A service provider established in the United Kingdom is guilty of an offence if, in the course of providing information society services, the provider does anything in an EEA State other than the United Kingdom which, if done in the United Kingdom, would constitute an offence under subsection (1).”

(3) After subsection (5) insert—

“(5A) Nothing in subsection (1) makes it an offence for a service provider established outside the United Kingdom to do anything in the course of providing information society services.”

6 (1) Section 11 (brandsharing) is amended as follows.

(2) In subsection (3), after “3,” insert “ 3A, 7A, 7C, 7D,”.

(3) After subsection (4) insert—

“(5) A service provider established in the United Kingdom is guilty of an offence if, in the course of providing information society services, the provider does anything in an EEA State other than the United Kingdom which, if done in the United Kingdom, would constitute an offence under subsection (4).

(6) Nothing in subsection (4) makes it an offence for a service provider established outside the United Kingdom to do anything in the course of providing information society services.”

**Annotations:**

**Commencement Information**

**I11** Sch. 4 para. 6 partly in force; Sch. 4 para. 6(3) in force at 12.1.2010 see s. 40(7)(b)

7 (1) Section 13 (enforcement) is amended as follows.

(2) In subsection (1)(a), after “Wales, a” insert “ local”.

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- (3) In subsection (3), after “Wales” insert “, Northern Ireland”.
- (4) Omit subsection (4).
- (5) In subsection (5), after “proceedings” insert “which are—
  - (a) in respect of an offence committed in England, and
  - (b)”.
- (6) After subsection (5) insert—
  - “(5A) The Welsh Ministers may take over the conduct of any proceedings which are—
    - (a) in respect of an offence committed in Wales, and
    - (b) instituted in England and Wales by another person under any provision of this Act or regulations made under it.”

**Annotations:**

**Commencement Information**

**I12** Sch. 4 para. 7 partly in force; Sch. 4 para. 7(2) in force at 12.1.2010 see s. 40(7)(b)

PROSPECTIVE

- 8** (1) Section 14 (powers of entry etc.) is amended as follows.
  - (2) Omit subsection (11).
  - (3) In subsection (12)—
    - (a) omit “or” at the end of paragraph (a),
    - (b) after paragraph (a) insert—
      - “(aa) the Welsh Ministers take over any proceedings by virtue of section 13(5A), or”, and
    - (c) after “(as the case may be)” insert “ the Welsh Ministers or”.
- 9** (1) Section 16 (penalties) is amended as follows.
  - (2) Subsection (1A) (limitation of penalty for certain offences relating to information society services) ceases to have effect.
  - (3) In subsection (2)(a), for “level 5 on the standard scale” substitute “ the statutory maximum”.
  - (4) Sub-paragraph (2) does not apply to offences committed before the coming into force of that sub-paragraph.

**Annotations:**

**Commencement Information**

**I13** Sch. 4 para. 9 partly in force; Sch. 4 para. 9(2)(4) in force at Royal Assent and Sch. 4 para. 9(3) in force at 12.1.2010 see s. 40(5)(a)(7)(b)

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PROSPECTIVE

**10** In section 17(1) (defences: burden of proof) after “6(1),” insert “ 7B(5) and (7),”.

**11** (1) Section 19 (regulations) is amended as follows.

(2) In subsection (1), after “Powers” insert “ of the Secretary of State, the Welsh Ministers and the Scottish Ministers”.

(3) After subsection (1) insert—

“(1A) Powers of the Department of Health, Social Services and Public Safety to make regulations under this Act are exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979.”

(4) For subsections (3) to (5) substitute—

“(3) No statutory instrument containing an order under section 7 or regulations under sections 7C, 7D, 8, 9 or 11 is to be made—

- (a) 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;
- (b) by the Welsh Ministers unless a draft of the instrument has been laid before and approved by a resolution of the National Assembly for Wales;
- (c) by the Scottish Ministers unless a draft of the instrument has been laid before and approved by a resolution of the Scottish Parliament.

(4) In any other case, a statutory instrument containing regulations made under this Act—

- (a) by the Secretary of State is subject to annulment in pursuance of a resolution of either House of Parliament;
- (b) by the Welsh Ministers is subject to annulment in pursuance of a resolution of the National Assembly for Wales;
- (c) by the Scottish Ministers is subject to annulment in pursuance of a resolution of the Scottish Parliament.

(5) The Department of Health, Social Services and Public Safety may not make regulations under section 7C unless a draft of the regulations has been laid before, and approved by a resolution of, the Northern Ireland Assembly.

(6) In any other case, regulations made by the Department of Health, Social Services and Public Safety under this Act are to be subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954 as if they were a statutory instrument within the meaning of that Act.”

**Annotations:**

**Commencement Information**

**I14** Sch. 4 para. 11 partly in force; Sch. 4 para. 11 in force for specified purposes at Royal Assent see s. 40(6)(c)

**12** In section 21(1) (interpretation), for the definition of “appropriate Minister” substitute —

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“appropriate Minister”—

- (a) in relation to England, means the Secretary of State,
- (b) in relation to Wales, means the Welsh Ministers,
- (c) in relation to Northern Ireland, means the Department of Health, Social Services and Public Safety, and
- (d) in relation to Scotland, means the Scottish Ministers.”.

**Annotations:**

**Commencement Information**

**I15** Sch. 4 para. 12 partly in force; Sch. 4 para. 12 in force for specified purposes at Royal Assent see s. 40(6)(c)

- 13** In the Schedule (information society service providers), in paragraph 1, in the definition of “relevant offence”, for “or 9” substitute “, 7D, 8, 9 or 11”.

**Annotations:**

**Commencement Information**

**I16** Sch. 4 para. 13 partly in force; Sch. 4 para. 13 in force for specified purposes on 12.1.2010 see s. 40(7)(c)

PROSPECTIVE

SCHEDULE 5

Section 35

INVESTIGATION OF COMPLAINTS ABOUT PRIVATELY  
ARRANGED OR FUNDED ADULT SOCIAL CARE

**PART 1**

NEW PART 3A FOR THE LOCAL GOVERNMENT ACT 1974

- 1** The Local Government Act 1974 (c. 7) is amended as follows.
- 2** After Part 3 (local government administration) insert—

**“PART 3A**

INVESTIGATION OF COMPLAINTS ABOUT PRIVATELY  
ARRANGED OR FUNDED ADULT SOCIAL CARE

Private adult social care: matters subject to investigation

**34A Interpretation: “adult social care provider” and “adult social care”**

- (1) This section applies for the purposes of this Part.

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- (2) “Adult social care” means social care within the meaning of Part 1 of the Health and Social Care Act 2008 which is provided to persons aged 18 or over.
- (3) “Adult social care provider” means a person who carries on an activity which—
  - (a) involves, or is connected with, the provision of adult social care, and
  - (b) is a regulated activity within the meaning of Part 1 of the 2008 Act.
- (4) Action is to be treated as action taken by an adult social care provider if it is taken by—
  - (a) a person employed by that provider,
  - (b) a person acting on behalf of that provider, or
  - (c) a person to whom that provider has delegated any functions.
- (5) Action is also to be treated as action taken by an adult social care provider if—
  - (a) that provider provides adult social care by means of an arrangement with another person, and
  - (b) the action is taken by or on behalf of the other person in carrying out the arrangement.

#### **34B Power to investigate**

- (1) Under this Part, a Local Commissioner may investigate a matter—
  - (a) which relates to action taken by an adult social care provider in connection with the provision of adult social care, and
  - (b) in relation to which Condition 1 or 2 is met.
- (2) But a Local Commissioner may not conduct an investigation under this Part in respect of any action or matter described in Schedule 5A.
- (3) Condition 1 is met if a complaint about the matter which satisfies sections 34C and 34D has been made to a Local Commissioner.
- (4) Any question whether Condition 1 is met in relation to a matter is to be determined by a Local Commissioner.
- (5) Condition 2 is met if—
  - (a) the matter has come to the attention of a Local Commissioner, and
  - (b) section 34E applies to the matter.
- (6) Before investigating a matter under this Part a Local Commissioner must be satisfied that—
  - (a) the matter has been brought, by or on behalf of the person affected, to the notice of the adult social care provider to which it relates and that that provider has been afforded a reasonable opportunity to investigate the matter and to respond, or
  - (b) in the particular circumstances, it is not reasonable to expect the matter to be brought to the notice of that provider or for that provider to be afforded a reasonable opportunity to investigate the matter and to respond.
- (7) In subsection (6) the reference to a person affected includes a reference to that person's personal representatives.

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- (8) In deciding whether to initiate, continue or discontinue an investigation, a Local Commissioner must, subject to the provisions of this section and sections 34C to 34E, act in accordance with the Local Commissioner's own discretion.
- (9) Without prejudice to the discretion conferred by subsection (8), a Local Commissioner who is satisfied with action which the adult social care provider concerned has taken or proposes to take may in particular decide—
  - (a) not to investigate a matter, or
  - (b) to discontinue an investigation of a matter.
- (10) Her Majesty may by Order in Council amend Schedule 5A by adding, omitting or changing a description of an action or matter.
- (11) A statutory instrument containing an Order in Council made under subsection (10) is subject to annulment in pursuance of a resolution of either House of Parliament.

### **34C Who can complain**

- (1) A complaint about a matter under this Part may only be made—
  - (a) by a member of the public who claims to have sustained injustice in consequence of the matter (“P”),
  - (b) by a person authorised in writing by P to act on P's behalf, or
  - (c) in accordance with subsection (2).
- (2) Where a member of the public by whom a complaint about a matter might have been made under this Part (“D”) has died or is otherwise unable to authorise a person to act on D's behalf, the complaint may be made—
  - (a) by D's personal representatives (if any), or
  - (b) by a person who appears to a Local Commissioner to be suitable to represent D.

### **34D Procedure for making complaints**

- (1) Subject to subsection (3), a complaint about a matter under this Part must be made—
  - (a) in writing, and
  - (b) before the end of the permitted period.
- (2) In subsection (1)(b), the “permitted period” means the period of 12 months beginning with—
  - (a) the day on which the person affected first had notice of the matter, or
  - (b) if the person affected has died without having notice of the matter—
    - (i) the day on which the personal representatives of the person affected first had notice of the matter, or
    - (ii) if earlier, the day on which the complainant first had notice of the matter.
- (3) A Local Commissioner may disapply either or both of the requirements in subsection (1)(a) and (b) in relation to a particular complaint.

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### **34E Matters coming to attention of Local Commissioner**

- (1) This section applies to a matter which has come to the attention of a Local Commissioner if—
  - (a) the matter came to the Local Commissioner's attention during the course of an investigation under Part 3 or this Part,
  - (b) (subject to subsection (3)) the matter came to the Local Commissioner's attention—
    - (i) before the person affected or that person's personal representatives had notice of the matter, or
    - (ii) in any other case, before the end of the permitted period, and
  - (c) it appears to the Local Commissioner that a member of the public has, or may have, suffered injustice in consequence of the matter.
- (2) In subsection (1)(b)(ii), “the permitted period” means the period of 12 months beginning with—
  - (a) the day on which the person affected first had notice of the matter, or
  - (b) if the person affected has died without having notice of the matter, the day on which the personal representatives of the person affected first had notice of the matter.
- (3) A Local Commissioner may disapply the requirement in subsection (1)(b) in relation to a particular matter.

#### Investigations by a Local Commissioner

### **34F Procedure in respect of investigations**

- (1) A Local Commissioner who proposes to investigate a matter under this Part must give the following persons an opportunity to comment on the matter—
  - (a) the adult social care provider concerned;
  - (b) any person who is alleged in the complaint (if any) to have taken or authorised the action which would be the subject of the investigation;
  - (c) any person who otherwise appears to the Local Commissioner to have taken or authorised that action.
- (2) Every investigation under this Part is to be conducted in private.
- (3) Subject to subsection (2), the procedure for conducting an investigation is to be such as the Local Commissioner considers appropriate in the circumstances of the case.
- (4) The Local Commissioner may, in particular—
  - (a) obtain information from such persons and in such manner as the Local Commissioner thinks fit,
  - (b) make such inquiries as the Local Commissioner thinks fit, and
  - (c) determine whether any person may be represented (by counsel, solicitor or otherwise) in the investigation.
- (5) The Local Commissioner may, if the Local Commissioner thinks fit, pay to the person by whom the complaint (if any) was made, and to any other person who

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attends or furnishes information for the purposes of an investigation under this Part—

- (a) sums in respect of the expenses properly incurred by them;
- (b) allowances by way of compensation for the loss of their time.

### **34G Investigations: further provisions**

- (1) For the purposes of an investigation under this Part a Local Commissioner may require the following persons to furnish information or produce documents relevant to the investigation—
  - (a) the adult social care provider concerned;
  - (b) any other person who in the Local Commissioner's opinion is able to furnish any such information or produce any such documents.
- (2) Nothing in subsection (1) affects the restriction imposed by section 26 of the PSOWA 2005.
- (3) For the purposes of an investigation under this Part a Local Commissioner has the same powers as the High Court in respect of—
  - (a) the attendance and examination of witnesses, and
  - (b) the production of documents.
- (4) To assist in any investigation, a Local Commissioner may obtain advice from any person who in the Local Commissioner's opinion is qualified to give it.
- (5) A Local Commissioner may pay to any such person giving advice such fees or allowances as the Local Commissioner may determine.
- (6) A Local Commissioner may appoint and pay a mediator or other appropriate person to assist in the conduct of an investigation under this Part.
- (7) Any person appointed under subsection (6) is to be deemed to be an officer of the Commission in carrying out functions under that appointment.
- (8) No person may be compelled for the purposes of an investigation under this Part to give any evidence or produce any document which the person could not be compelled to give or produce in civil proceedings before the High Court.
- (9) If any person without lawful excuse—
  - (a) obstructs a Local Commissioner in the performance of the Local Commissioner's functions under this Part,
  - (b) obstructs any person discharging or assisting in the discharge of those functions, or
  - (c) is guilty of an act or omission in relation to an investigation under this Part which, if that investigation were a proceeding in the High Court, would constitute contempt of court,
 the Local Commissioner may certify the offence to the High Court.
- (10) Where an offence is so certified, the High Court may inquire into the matter and, after hearing any witnesses who may be produced against or on behalf of the person charged (“D”), and after hearing any statement that may be offered in defence, deal with D in any manner in which the High Court could deal with D if D had committed the like offence in relation to the High Court.

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## Statements etc. about investigations

### 34H Statements about investigations

- (1) A Local Commissioner must prepare a written statement in accordance with subsections (2) to (4) if the Local Commissioner—
  - (a) decides not to investigate a matter under this Part,
  - (b) decides to discontinue such an investigation, or
  - (c) completes such an investigation.
- (2) In a case falling within subsection (1)(a) or (b), the statement must set out the Local Commissioner's reasons for the decision.
- (3) In a case falling within subsection (1)(c), the statement must—
  - (a) set out the Local Commissioner's conclusions on the investigation, and
  - (b) include any recommendations the Local Commissioner considers it appropriate to make.
- (4) The recommendations the Local Commissioner may make are recommendations with respect to action which, in the Local Commissioner's opinion, the adult social care provider concerned should take—
  - (a) to remedy any injustice sustained by the person affected in consequence of the action of the provider which was the subject of the investigation, and
  - (b) to prevent injustice being caused in the future in consequence of similar action of the provider.
- (5) The Local Commissioner must send a copy of a statement prepared under this section to each of the persons concerned.
- (6) The persons concerned are—
  - (a) the complainant (if any);
  - (b) the adult social care provider concerned;
  - (c) any person who is alleged in the complaint (if any) to have taken or authorised the action which was the subject of the investigation;
  - (d) any person who otherwise appears to the Local Commissioner to have taken or authorised such action.
- (7) The Local Commissioner may send a copy of a statement prepared under this section to—
  - (a) the Care Quality Commission, and
  - (b) any local authority which appears to the Commissioner to have an interest in the subject matter of the statement.
- (8) The statement must identify the adult social care provider concerned unless—
  - (a) the provider is an individual, or a particular individual would, in the opinion of the Local Commissioner, be likely to be identified as a result of identifying the provider, and
  - (b) the Local Commissioner considers that it is not appropriate for the individual to be identified.

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- (9) The statement must not—
- (a) mention the name of any person other than the provider, or
  - (b) contain any particulars which, in the opinion of the Local Commissioner, are likely to identify any other person and can be omitted without impairing the effectiveness of the statement,
- unless, after taking into account the public interest as well as the interests of that person, the complainant (if any) and of other persons, the Local Commissioner considers it necessary to mention the name of that person or to include in the statement any such particulars.

### **34I Adverse findings notices**

- (1) This section applies where an adult social care provider receives a statement prepared under section 34H which contains recommendations.
- (2) The adult social care provider concerned must—
  - (a) consider the statement, and
  - (b) notify the Local Commissioner within the required period of the action which the provider has taken or proposes to take.
- (3) The Local Commissioner may by notice require the provider to arrange for an adverse findings notice to be published in accordance with subsections (4) and (5) if the Local Commissioner—
  - (a) does not receive the notification mentioned in subsection (2)(b) within the required period or is satisfied before the end of that period that the adult social care provider concerned has decided to take no action,
  - (b) is not satisfied with the action which the provider concerned has taken or proposes to take, or
  - (c) does not within a period of one month beginning with the end of the required period, or such longer period as the Local Commissioner may agree in writing, receive confirmation that the provider has taken action, as proposed, to the satisfaction of the Local Commissioner.
- (4) An adverse findings notice is a notice, in such form as the adult social care provider concerned and the Local Commissioner may agree, consisting of—
  - (a) details of any action recommended in the statement which the provider has not taken;
  - (b) such supporting material as the Local Commissioner may require;
  - (c) if the provider so requires, an explanation of the provider's reasons for having taken no action on, or not the action recommended in, the statement.
- (5) The adverse findings notice must be published by the adult social care provider in such manner as the Local Commissioner may direct.
- (6) If the adult social care provider—
  - (a) fails to arrange for the publication of the adverse findings notice in accordance with subsections (4) and (5), or
  - (b) is unable, within the period of one month beginning with the date on which the provider received the notice under subsection (3), or such longer period as the Local Commissioner may agree in writing, to agree

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with the Local Commissioner the form of the adverse findings notice to be published,

the Local Commissioner must arrange for an adverse findings notice to be published in such manner as the Local Commissioner considers appropriate.

- (7) The adult social care provider concerned must reimburse the Commission on demand any reasonable expenses incurred by the Local Commissioner in performing the duty under subsection (6).
- (8) In this section the “required period” means—
- (a) the period of one month beginning with the date on which the adult social care provider concerned received the statement, or
  - (b) such longer period as the Local Commissioner may agree in writing.

### **34J Publication of statements etc. by Local Commissioner**

- (1) A Local Commissioner may—
- (a) publish all or part of a statement under section 34H,
  - (b) arrange for further publication of all or part of an adverse findings notice published under section 34I(3) or (6), or
  - (c) publish a summary of a matter which is the subject of a statement or adverse findings notice under section 34H or 34I,
- if, after taking into account the public interest as well as the interests of the complainant (if any) and of other persons, the Local Commissioner considers it appropriate to do so.
- (2) A Local Commissioner may—
- (a) supply a copy of all or part of a statement, adverse findings notice or summary mentioned in subsection (1) to any person who requests it, and
  - (b) charge a reasonable fee for doing so.
- (3) Subsections (8) and (9) of section 34H apply to any part of a summary of a matter that is published, or a copy of which is supplied, under this section as they apply to a statement prepared under that section.

### **34K Disclosure of information**

- (1) Information obtained by a Local Commissioner, or any person discharging or assisting in the discharge of a function of a Local Commissioner, in the course of or for the purposes of an investigation under this Part must not be disclosed except—
- (a) for the purposes of the investigation and of any statement, adverse findings notice or summary under section 34H, 34I or 34J,
  - (b) for the purposes of an investigation under Part 3 and of any report, statement or summary under section 30, 31 or 31B in relation to such an investigation,
  - (c) for the purposes of a complaint which is being investigated by the Parliamentary Commissioner or the Health Service Commissioner (or both),

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- (d) for the purposes of any proceedings for an offence under the Official Secrets Acts 1911 to 1989 alleged to have been committed in respect of information obtained, by virtue of this Part, by a Local Commissioner or by a person discharging or assisting in the discharge of a function of a Local Commissioner,
  - (e) for the purposes of any proceedings for an offence of perjury alleged to have been committed in the course of an investigation under this Part,
  - (f) for the purposes of an inquiry with a view to the taking of proceedings of a kind mentioned in paragraph (d) or (e), or
  - (g) for the purposes of proceedings under section 34G(10).
- (2) A Local Commissioner or a person discharging or assisting in the discharge of a function of a Local Commissioner may not be called upon to give evidence in any proceedings (other than proceedings within paragraphs (d), (e) or (g) of subsection (1)) of matters coming to his or her knowledge in the course of an investigation under this Part.
- (3) A Local Commissioner must not prepare a statement under section 34H which includes government information unless the Local Commissioner has—
- (a) obtained the written consent of an officer of the government department concerned, or
  - (b) given the department not less than one month's notice in writing of the intention to include the information in a statement.
- (4) In subsection (3) “government information” means information disclosed under section 34G(1) which—
- (a) is derived from a communication with a government department, and
  - (b) has not been made public.
- (5) Information obtained from the Information Commissioner by virtue of section 76 of the Freedom of Information Act 2000 is to be treated for the purposes of subsection (1) as obtained for the purposes of an investigation under this Part and, in relation to such information, the reference in paragraph (a) of that subsection to the investigation has effect as a reference to any investigation.

### **34L Law of defamation**

- (1) For the purposes of the law of defamation the following are absolutely privileged—
- (a) the publication of any matter in communications between an adult social care provider and a Local Commissioner, or any person discharging or assisting in the discharge of a function of a Local Commissioner, for the purposes of this Part;
  - (b) the publication of any matter by a Local Commissioner or by any person discharging or assisting in the discharge of a function of a Local Commissioner, in communicating for the purposes of this Part with a person mentioned in subsection (2);
  - (c) the publication of any matter in preparing, making and sending a statement in accordance with section 34H;
  - (d) the publication of any matter by inclusion in an adverse findings notice published in accordance with section 34I(3), (4) and (5) or (6);

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- (e) the publication of any matter by inclusion in a statement, adverse findings notice or summary published or supplied under section 34J;
  - (f) the publication of any matter contained in a report by a Local Commissioner which has been made available to the public, being publication by inclusion in a report made or published under section 34S.
- (2) The persons mentioned in subsection (1)(b) are—
- (a) a complainant or the person affected in relation to a matter;
  - (b) the Parliamentary Commissioner, the Health Service Commissioner or any officer of either such Commissioner;
  - (c) the Care Quality Commission or any officer of that Commission;
  - (d) a local authority.

Arrangements with other Commissioners etc.

#### **34M Consultation with other Commissioners**

- (1) Subsection (2) applies if, at any stage in the course of an investigation under this Part, a Local Commissioner forms the opinion that the matters which are the subject of the investigation include a matter which could be the subject of an investigation by—
- (a) the Parliamentary Commissioner, in accordance with the PCA 1967;
  - (b) the Health Service Commissioner, in accordance with the HSCA 1993;
  - (c) the Scottish Public Services Ombudsman in accordance with the SPSOA 2002; or
  - (d) the Public Services Ombudsman for Wales, in accordance with the PSOWA 2005.
- (2) The Local Commissioner—
- (a) must consult with the appropriate Commissioner or Ombudsman about the matter, and
  - (b) where a complaint was made about the matter must, if the Local Commissioner considers it necessary, inform the person initiating the complaint under this Part of the steps necessary to initiate a complaint under the PCA 1967, the HSCA 1993, the SPSOA 2002 or the PSOWA 2005, as the case may be.
- (3) Consultation under subsection (2)(a) in relation to a matter under investigation under this Part may be about anything relating to the matter, including—
- (a) the conduct of any investigation into the matter, and
  - (b) the form, content and publication of any report or statement of the results of or conclusions on such an investigation.
- (4) Subsection (5) applies if, at any stage in the course of conducting an investigation under the PCA 1967, the Parliamentary Commissioner forms the opinion that the complaint relates partly to a matter which could be the subject of an investigation under this Part.
- (5) The Parliamentary Commissioner—

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- (a) must consult with the appropriate Local Commissioner about the complaint, and
  - (b) if the Parliamentary Commissioner considers it necessary, must inform the person initiating the complaint of the steps necessary to initiate a complaint under this Part.
- (6) Where a Local Commissioner is consulted about a complaint under the PCA 1967 by virtue of subsection (5), subsection (3) applies (with the necessary modifications) as it applies in relation to consultations held by virtue of subsection (2).
- (7) Nothing in the following provisions applies in relation to the disclosure of information in the course of consultations held in accordance with this section—
- (a) section 11(2) of the PCA 1967;
  - (b) section 15 of the HSCA 1993;
  - (c) section 19 of the SPSOA 2002;
  - (d) section 26 of the PSOWA 2005;
  - (e) section 34K(1) of this Act.

#### **34N Collaborative working with other Commissioners**

- (1) If, at any stage in the course of an investigation under this Part, a Local Commissioner forms the opinion that the matters which are the subject of the investigation include a matter within the jurisdiction of—
- (a) the Parliamentary Commissioner,
  - (b) the Health Service Commissioner, or
  - (c) both,
- the Local Commissioner may conduct an investigation under this Part jointly with that Commissioner or those Commissioners.
- (2) A Local Commissioner must obtain the consent of the person affected or the complainant (if any) before agreeing to a joint investigation referred to in subsection (1).
- (3) If a Local Commissioner forms the opinion that a complaint being investigated by—
- (a) the Parliamentary Commissioner,
  - (b) the Health Service Commissioner, or
  - (c) both,
- relates partly to a matter within the Local Commissioner's jurisdiction by virtue of this Part, the Local Commissioner may conduct an investigation under this Part jointly with that Commissioner or those Commissioners.
- (4) If a Local Commissioner conducts an investigation jointly with another person, the requirements of section 34H(1)(c) and (5) (so far as relating to a case where the Local Commissioner conducts an investigation under this Part) may be satisfied by a statement or report made jointly with that person.

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### **34O Disclosure of information by Local Commissioner to Information Commissioner**

- (1) A Local Commissioner may disclose to the Information Commissioner any information obtained by, or furnished to, the Local Commissioner under or for the purposes of this Part if the information appears to the Local Commissioner to relate to—
  - (a) a matter in respect of which the Information Commissioner could exercise any power conferred by—
    - (i) Part 5 of the Data Protection Act 1998 (enforcement),
    - (ii) section 48 of the Freedom of Information Act 2000 (practice recommendations), or
    - (iii) Part 4 of that Act (enforcement), or
  - (b) the commission of an offence under—
    - (i) any provision of the Data Protection Act 1998 other than paragraph 12 of Schedule 9 (obstruction of execution of warrant), or
    - (ii) section 77 of the Freedom of Information Act 2000 (offence of altering etc. records with intent to prevent disclosure).
- (2) Nothing in section 34K(1) applies in relation to the disclosure of information in accordance with this section.

### **34P Disclosure of information by Local Commissioner to Care Quality Commission**

- (1) A Local Commissioner may disclose to the Care Quality Commission any information obtained by, or furnished to, the Local Commissioner under or for the purposes of this Part if the information appears to the Local Commissioner to relate to a matter in respect of which the Care Quality Commission has functions under any enactment.
- (2) Nothing in section 34K(1) applies in relation to the disclosure of information in accordance with this section.

#### General

### **34Q Arrangements etc. to be made by Commission**

- (1) The Commission must—
  - (a) divide the matters which may be investigated under this Part into such categories as it considers appropriate, and
  - (b) allocate, or make arrangements for allocating, responsibility for each category of matter to one or more of the Local Commissioners.
- (2) The Commission—
  - (a) must make arrangements for Local Commissioners to deal with matters for which they do not have responsibility pursuant to subsection (1), and

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- (b) must publish information about the procedures for making complaints under this Part.

### **34R Review, recommendations, advice and guidance**

- (1) In each financial year in which the Commission conducts a review under section 23(12), it must also review the operation (since the last review was made under this subsection) of the provisions of this Part about the investigation of matters.
- (2) The Commission may convey to government departments and the Care Quality Commission any recommendations or conclusions reached in the course of a review under subsection (1).
- (3) The Commission may—
  - (a) provide to adult social care providers or any adult social care provider such advice and guidance about good practice as appears to the Commission to be appropriate, and
  - (b) arrange for the advice and guidance to be published for the information of the public.
- (4) Before providing advice or guidance under subsection (3) the Commission must consult such persons as appear to it to be appropriate.

### **34S Annual reports**

- (1) Every Local Commissioner must for each financial year—
  - (a) prepare a general report on the discharge of the Local Commissioner's functions under this Part, and
  - (b) submit it to the Commission not later than 2 months after the end of the year to which it relates.
- (2) The Commission must for each financial year prepare a general report on the discharge of its functions under this Part (the “Part 3A annual report”).
- (3) The Part 3A annual report must be prepared as soon as may be after the Commission has received the reports for the year from Local Commissioners under subsection (1).
- (4) The Commission must arrange for the publication of—
  - (a) the Part 3A annual report, and
  - (b) the reports which are submitted under subsection (1).
- (5) The Commission must lay a copy of the Part 3A annual report before Parliament.

### **34T Interpretation of Part 3A**

- (1) In this Part—
  - “adult social care” and “adult social care provider” have the meanings given by section 34A;
  - “Health Service Commissioner” means the Health Service Commissioner for England;

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“the HSCA 1993” means the Health Service Commissioners Act 1993;

“the PCA 1967” means the Parliamentary Commissioner Act 1967;

“person affected”—

(a) in relation to a matter which is the subject of a complaint made or to be made under this Part, means a member of the public who claims or is alleged to have sustained injustice in consequence of the matter, and

(b) in relation to a matter coming to the attention of a Local Commissioner to which section 34E applies, means the member of the public who the Local Commissioner considers has, or may have, sustained injustice in consequence of the matter;

“the PSOWA 2005” means the Public Services Ombudsman (Wales) Act 2005;

“the SPSOA 2002” means the Scottish Public Services Ombudsman Act 2002.

(2) The following terms have the same meaning in this Part as they have in Part 3—

(a) action (and other expressions connoting action) (see section 34);

(b) the Commission (see section 34);

(c) local authority (see section 34);

(d) Local Commissioner (see section 23(3));

(e) Parliamentary Commissioner (see section 34).

(3) Section 34(1A) applies for the purposes of this Part as it applies for the purposes of Part 3.”

**3** After Schedule 5 (matters not subject to investigation) insert—

“SCHEDULE 5A

Section 34B

MATTERS NOT SUBJECT TO INVESTIGATION UNDER PART 3A

**1** A matter which could be the subject of an investigation by a Local Commissioner under Part 3.

**2** A matter which could be the subject of an investigation by the Health Service Commissioner under the HSCA 1993.

**3** The commencement or conduct of civil or criminal proceedings before any court of law.

**4** Action taken in respect of appointments or removals, pay, discipline, superannuation or other personnel matters.”

**PART 2**

MINOR AND CONSEQUENTIAL AMENDMENTS

Local Government Act 1974 (c. 7)

**4** Part 3 of the Local Government Act 1974 is amended as follows.

**5** (1) Section 23 (the Commission for Local Administration) is amended as follows.

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- (2) In subsection (1), after “this Part” insert “ and Part 3A”.
- (3) In subsection (11), after “functions” insert “ (other than those under Part 3A of this Act)”.
- 6** In section 23A(1) (annual reports for representatives etc.), after “functions” insert “ (other than those under Part 3A of this Act)”.
- 7** In section 26D(1)(a) (matters coming to attention of Local Commissioner), after “this Part” insert “ or Part 3A”.
- 8** (1) Section 29 (investigations under Part 3: further provisions) is amended as follows.
- (2) For subsection (5) substitute—
- “(5) Nothing in subsection (1) or subsection (3) above affects the restriction imposed by section 26 of the Public Services Ombudsman (Wales) Act 2005.”
- (3) In subsection (6A), after “under this” insert “ Part of this”.
- 9** In section 30(1) (reports on investigations under Part 3), after “matter” insert “ under this Part of this Act”.
- 10** In section 32(2) (law of defamation), after paragraph (a) insert—
- “(aza) for the purposes of an investigation under Part 3A of this Act and of any statement, adverse findings notice or summary under section 34H, 34I or 34J in relation to such an investigation; or”.
- 11** (1) Section 33ZA (collaborative working between Local Commissioners and Other Commissioners) is amended as follows.
- (2) In subsection (1), after “under this” (in both places where it occurs) insert “ Part of this”.
- (3) In subsection (3)—
- (a) after “his jurisdiction” insert “ by virtue of this Part”,
- (b) after “under this” insert “ Part of this”.
- (4) In subsection (4), after “under this” insert “ Part of this”.
- 12** In Schedule 4 (the Commission), in paragraph 1, after sub-paragraph (2) insert—
- “(2A) A Local Commissioner shall not conduct a case which involves an adult social care provider if the Local Commissioner has a financial or other interest in the provider which is likely to affect prejudicially the exercise of his functions.
- (2B) In sub-paragraph (2A) “adult social care provider” has the same meaning as in Part 3A of this Act.”
- Health Service Commissioners Act 1993 (c. 46)
- 13** In section 18(1)(c) of the Health Service Commissioners Act 1993 (consultations during investigations), after “Part III” insert “ or 3A”.

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Freedom of Information Act 2000 (c. 36)

- 14** In section 76 of the Freedom of Information Act 2000 (disclosure of information between Commissioner and ombudsmen), in the Table, in the second column, after “Part III” insert “ or Part 3A”.

Scottish Public Services Ombudsman Act 2002 (2002 asp 11)

- 15** In section 21(1)(d) of the Scottish Public Services Ombudsman Act 2002 (consultation and cooperation with other Commissioners and Ombudsmen), after “Part III” insert “ or 3A”.

SCHEDULE 6

Section 38

REPEALS AND REVOCATIONS

**Annotations:**

**Commencement Information**

**I17** [Sch. 6](#) partly in force; [Sch. 6](#) in force for specified purposes at Royal Assent see [s. 40\(5\)\(b\)](#)

<i>Title</i>	<i>Extent of repeal or revocation</i>
Children and Young Persons Act 1933 (c. 12)	In section 12D(1), the word “or” at the end of paragraph (a).
Health Service Commissioners Act 1993 (c. 46)	In Schedule 2, paragraph 3.
Tobacco Advertising and Promotion Act 2002 (c. 36)	Section 13(4). In section 14— (a) subsection (11); (b) in subsection (12), the word “or” at the end of paragraph (a). Section 16(1A).

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**Changes and effects yet to be applied to the whole Act, associated Parts and Chapters:**

- Act Appointed Day(s) by [S.I. 2010/1068](#) (commencement order for 2009 c. 21)
- Act Appointed Day(s) by [S.I. 2010/30](#) (commencement order for 2009 c. 21)
- Act Appointed Day(s) by [S.I. 2010/779](#) (commencement order for 2009 c. 21)
- Act Appointed Day(s) by [S.I. 2010/930](#) (commencement order for 2009 c. 21)
- Act Appointed day(s) by [S.I. 2010/1863](#) (commencement order for 2009 c. 21)
- Act excluded by [S.I. 2010/279](#)