

Health and Social Care Bill

The Bill is divided into two volumes. Volume I contains the Clauses. Volume II contains the Schedules to the Bill.

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Department of Health, are published separately as Bill 132 – EN.

EUROPEAN CONVENTION ON HUMAN RIGHTS

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

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

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B I L L

TO

Establish and make provision about a National Health Service Commissioning Board and commissioning consortia and to make other provision about the National Health Service in England; to make provision about public health in the United Kingdom; to make provision about regulating health and adult social care services; to make provision about public involvement in health and social care matters, scrutiny of health matters by local authorities and co-operation between local authorities and commissioners of health care services; to make provision about regulating health and social care workers; to establish and make provision about a National Institute for Health and Care Excellence; to establish and make provision about a Health and Social Care Information Centre and to make other provision about information relating to health or social care matters; to abolish certain public bodies involved in health or social care; to make other provision about health care; and for connected purposes.

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

PART 1

THE HEALTH SERVICE IN ENGLAND

The health service: overview

1 The Secretary of State and the comprehensive health service

- (1) Section 1 of the National Health Service Act 2006 (Secretary of State’s duty to promote health service) is amended as follows. 5
- (2) For subsection (2) substitute—
- “(2) For that purpose, the Secretary of State—
- (a) has the public health functions conferred by this Act, and

- (b) in exercising functions in relation to a body mentioned in subsection (2A), must act with a view to securing the provision of services for the purposes of the health service in accordance with this Act.
- (2A) Those bodies are – 5
- (a) the National Health Service Commissioning Board;
 - (b) commissioning consortia;
 - (c) local authorities (as respects their public health functions)."
- (3) After subsection (2A) insert –
- “(2B) In this Act – 10
- (a) any reference to the public health functions of the Secretary of State is a reference to the functions of the Secretary of State under sections 2A and 2B and Schedule 1, and
 - (b) any reference to the public health functions of local authorities is a reference to the functions of local authorities under section 2B and Schedule 1.” 15
- (4) In subsection (3) for “services so provided” substitute “services provided as part of the health service in England”.

2 The Secretary of State’s duty as to improvement in quality of services

After section 1 of the National Health Service Act 2006 insert – 20

“1A Duty as to improvement in quality of services

- (1) The Secretary of State must exercise the functions of the Secretary of State in relation to the health service with a view to securing continuous improvement in the quality of services provided to individuals for or in connection with – 25
 - (a) the prevention, diagnosis or treatment of illness, or
 - (b) the protection or improvement of public health.
- (2) In discharging the duty under subsection (1) the Secretary of State must, in particular, act with a view to securing continuous improvement in the outcomes that are achieved from the provision of the services. 30
- (3) The outcomes relevant for the purposes of subsection (2) include, in particular, outcomes which show –
 - (a) the effectiveness of the services,
 - (b) the safety of the services, and 35
 - (c) the quality of the experience undergone by patients.
- (4) In discharging the duty under subsection (1), the Secretary of State must have regard to the quality standards prepared by NICE under section 218 of the Health and Social Care Act 2011.”

3 The Secretary of State’s duty as to reducing inequalities

After section 1A of the National Health Service Act 2006 insert –

“1B Duty as to reducing inequalities

In exercising functions in relation to the health service, the Secretary of State must have regard to the need to reduce inequalities between the people of England with respect to the benefits that they can obtain from the health service.”

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4 The Secretary of State’s duty as to promoting autonomy

After section 1B of the National Health Service Act 2006 insert –

“1C Duty as to promoting autonomy

In exercising functions in relation to the health service, the Secretary of State must, so far as is consistent with the interests of the health service, act with a view to securing –

- (a) that any other person exercising functions in relation to the health service or providing services for its purposes is free to exercise those functions or provide those services in the manner that it considers most appropriate, and
- (b) that unnecessary burdens are not imposed on any such person.”

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5 The NHS Commissioning Board

- (1) After section 1C of the National Health Service Act 2006 insert –

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“Role of the Board in the health service in England

1D The National Health Service Commissioning Board and its general functions

- (1) There is to be a body corporate known as the National Health Service Commissioning Board (“the Board”).
 - (2) The Board is subject to the duty under section 1(1) concurrently with the Secretary of State except in relation to the part of the health service that is provided in pursuance of the public health functions of the Secretary of State or local authorities.
 - (3) For the purpose of discharging that duty, the Board –
 - (a) has the function of arranging for the provision of services for the purposes of the health service in England in accordance with this Act, and
 - (b) in exercising functions in relation to commissioning consortia, must act with a view to securing the provision of services for those purposes in accordance with this Act.
 - (4) Schedule A1 makes further provision about the Board.”
- (2) Before Schedule 1 to that Act, insert the Schedule set out in Schedule 1 to this Act.

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6 Commissioning consortia

After section 1D of the National Health Service Act 2006 insert –

“Role of commissioning consortia in the health service in England

1E Commissioning consortia and their general functions

- (1) There are to be bodies corporate known as commissioning consortia established in accordance with Chapter A2 of Part 2. 5
- (2) Each commissioning consortium has the function of arranging for the provision of services for the purposes of the health service in England in accordance with this Act.”

Arrangements for provision of health services 10

7 The Secretary of State’s duty as to protection of public health

After section 2 of the National Health Service Act 2006 insert –

“Provision for protection or improvement of public health

2A Secretary of State’s duty as to protection of public health

- (1) The Secretary of State must take such steps as the Secretary of State considers appropriate for the purpose of protecting the public in England from disease or other dangers to health. 15
- (2) The steps that may be taken under subsection (1) include –
- (a) the conduct of research or such other steps as the Secretary of State considers appropriate for advancing knowledge and understanding; 20
 - (b) providing microbiological or other technical services (whether in laboratories or otherwise);
 - (c) providing vaccination, immunisation or screening services;
 - (d) providing other services or facilities for the prevention, diagnosis or treatment of illness; 25
 - (e) providing training;
 - (f) providing information and advice;
 - (g) making available the services of any person or any facilities.
- (3) Subsection (4) applies in relation to any function under this section which relates to – 30
- (a) the protection of the public from ionising or non-ionising radiation, and
 - (b) a matter in respect of which the Health and Safety Executive has a function. 35
- (4) In exercising the function, the Secretary of State must –
- (a) consult the Health and Safety Executive, and
 - (b) have regard to its policies.”

8 Duties as to improvement of public health

After section 2A of the National Health Service Act 2006 insert –

“2B Functions of local authorities and Secretary of State as to improvement of public health

- (1) Each local authority must take such steps as it considers appropriate for improving the health of the people in its area. 5
- (2) The Secretary of State may take such steps as the Secretary of State considers appropriate for improving the health of the people of England.
- (3) The steps that may be taken under subsection (1) or (2) include – 10
 - (a) providing information and advice;
 - (b) providing services or facilities designed to promote healthy living (whether by helping individuals to address behaviour that is detrimental to health or in any other way);
 - (c) providing services or facilities for the prevention, diagnosis or treatment of illness; 15
 - (d) providing financial incentives to encourage individuals to adopt healthier lifestyles;
 - (e) providing assistance (including financial assistance) to help individuals to minimise any risks to health arising from their accommodation or environment; 20
 - (f) providing or participating in the provision of training for persons working or seeking to work in the field of health improvement;
 - (g) making available the services of any person or any facilities. 25
- (4) The steps that may be taken under subsection (1) also include providing grants or loans (on such terms as the local authority considers appropriate).
- (5) In this section, “local authority” means – 30
 - (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 Council of the Isles of Scilly;
 - (e) the Common Council of the City of London.” 35

9 Duties of consortia as to commissioning certain health services

- (1) Section 3 of the National Health Service Act 2006 is amended as follows.
- (2) In subsection (1) –
 - (a) for the words from the beginning to “reasonable requirements” substitute “A commissioning consortium must arrange for the provision of the following to such extent as it considers necessary to meet the reasonable requirements of the persons for whom it has responsibility”, and 40
 - (b) in each of paragraphs (d) and (e) for the words “as he considers” substitute “as the consortium considers”. 45

- (3) After that subsection insert—
- “(1A) For the purposes of this section, a commissioning consortium has responsibility for persons who are provided with primary medical services by a member of the consortium.
- (1B) Regulations may provide that for the purposes of this section a commissioning consortium also has responsibility (whether generally or in relation to a prescribed service or facility) for persons who have a prescribed connection with the consortium’s area. 5
- (1C) Regulations may provide that subsection (1A) does not apply— 10
- (a) in relation to persons of a prescribed description (which may include a description framed by reference to the primary medical services with which the persons are provided);
- (b) in prescribed circumstances.
- (1D) The duty in subsection (1) does not apply in relation to a service or facility if the Board has a duty to arrange for its provision.” 15
- (4) Omit subsections (2) and (3).
- (5) For the heading to section 3 substitute “Duties of consortia as to commissioning certain health services”.
- (6) For the cross-heading preceding section 3 substitute “Arrangements for the provision of certain health services”. 20
- 10 Power of consortia as to commissioning certain health services**
- After section 3 of the National Health Service Act 2006 insert—
- “3A Power of commissioning consortia to commission certain health services**
- (1) Each commissioning consortium may arrange for the provision of such services or facilities as it considers appropriate for the purposes of the health service that relate to securing improvement— 25
- (a) in the physical and mental health of the persons for whom it has responsibility, or
- (b) in the prevention, diagnosis and treatment of illness in those persons. 30
- (2) A commissioning consortium may not arrange for the provision of a service or facility under subsection (1) if the Board has a duty to arrange for its provision by virtue of section 3B or 4.
- (3) Subsections (1A) to (1C) of section 3 apply for the purposes of this section as they apply for the purposes of that section.” 35

11 Power to require Board to commission certain health services

After section 3A of the National Health Service Act 2006 insert –

“3B Secretary of State’s power to require Board to commission services

- (1) Regulations may require the Board to arrange, to such extent as it considers necessary to meet all reasonable requirements, for the provision as part of the health service of –
 - (a) dental services of a prescribed description;
 - (b) services or facilities for members of the armed forces or their families;
 - (c) services or facilities for persons who are detained in a prison or in other accommodation of a prescribed description;
 - (d) such other services or facilities as may be prescribed.
- (2) A service or facility may be prescribed under subsection (1)(d) only if the Secretary of State considers that it would be appropriate for the Board (rather than consortia) to arrange for its provision as part of the health service.
- (3) In deciding whether it would be so appropriate, the Secretary of State must have regard to –
 - (a) the number of individuals who require the provision of the service or facility;
 - (b) the cost of providing the service or facility;
 - (c) the number of persons able to provide the service or facility;
 - (d) the financial implications for commissioning consortia if they were required to arrange for the provision of the service or facility.
- (4) Before deciding whether to make regulations under this section, the Secretary of State must –
 - (a) obtain advice appropriate for that purpose, and
 - (b) consult the Board.
- (5) The reference in subsection (1)(b) to members of the armed forces is a reference to persons who are members of –
 - (a) the regular forces within the meaning of the Armed Forces Act 2006, or
 - (b) the reserve forces within the meaning of that Act.”

12 Secure psychiatric services

- (1) Section 4 of the National Health Service Act 2006 (high security psychiatric services) is amended as follows.
- (2) In subsection (1) for the words from the beginning to “duty to provide” substitute “The Board must arrange for the provision of”.
- (3) In subsection (3) –
 - (a) after “may be provided” insert “ –
 - (a) ”, and

- (b) after paragraph (a) insert “, and
(b) only by a person approved by the Secretary of State for the purposes of this subsection.”
- (4) After subsection (3) insert –
- “(3A) The Secretary of State may – 5
- (a) give directions to a person who provides high security psychiatric services about the provision by that person of those services;
- (b) give directions to the Board about the exercise of its functions in relation to high security psychiatric services.” 10
- 13 Other services etc. provided as part of the health service**
- (1) In section 5 of the National Health Service Act 2006 (other services) for “about the Secretary of State and services under this Act” substitute “about the provision of services for the purposes of the health service in England”.
- (2) Schedule 1 to that Act is amended as follows. 15
- (3) In paragraph 1 (medical inspection of pupils) –
- (a) for “The Secretary of State” substitute “A local authority”, and
- (b) for “local authorities” substitute “the local authority”.
- (4) In paragraph 2 –
- (a) in sub-paragraph (1) – 20
- (i) for “The Secretary of State” substitute “A local authority”, and
- (ii) omit “, by arrangement with any local authority”,
- (b) in sub-paragraph (2) –
- (i) for “The Secretary of State” substitute “A local authority”,
- (ii) after “educational establishment” insert “in its area”, and 25
- (iii) for “a local authority” substitute “the local authority”, and
- (c) omit sub-paragraph (3).
- (5) In paragraph 4 –
- (a) for “A local authority may not make an arrangement” substitute “A local authority may not provide for any medical inspection or treatment”, and 30
- (b) for “the arrangement” substitute “the inspection or (as the case may be) treatment”.
- (6) In paragraph 5 –
- (a) omit sub-paragraph (1)(a) and the word “and” immediately following it, 35
- (b) in sub-paragraph (2) omit “local authority or”,
- (c) for “the Secretary of State” substitute “a local authority”, and
- (d) for “him” substitute “it”.
- (7) In paragraph 6 after “to 5” insert “ – 40
- (a) any reference to medical inspection or medical treatment includes dental inspection or (as the case may be) dental treatment; and
- (b) ”.

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- (8) In paragraph 7A (weighing and measuring of children) –
- (a) for “The Secretary of State” (in each place it occurs) substitute “A local authority”,
 - (b) in sub-paragraph (1) omit “, by arrangement with any local authority,”, and 5
 - (c) in sub-paragraph (2) –
 - (i) after “any school” insert “in its area”, and
 - (ii) for “a local authority” substitute “the local authority”.
- (9) In paragraph 7B (regulations as to weighing and measuring of children) –
- (a) in sub-paragraph (1)(b) for “by the Secretary of State” substitute “by a local authority”, and 10
 - (b) in sub-paragraph (1)(d) for “by the Secretary of State” substitute “by a local authority”.
- (10) After paragraph 7B insert –
- “Supply of blood and other human tissues”* 15
- 7C The Secretary of State must for the purposes of the health service make arrangements for –
- (a) collecting, screening, analysing, processing and supplying blood or other tissues,
 - (b) preparing blood components and reagents, and 20
 - (c) facilitating tissue and organ transplantation.”
- (11) In paragraph 9 (provision of vehicles for disabled persons) –
- (a) the existing text becomes sub-paragraph (1),
 - (b) in that sub-paragraph –
 - (i) for “The Secretary of State may provide” substitute “A commissioning consortium may make arrangements for the provision of”, and 25
 - (ii) for “persons appearing to him to be persons who have a physical impairment” substitute “persons for whom the consortium has responsibility and who appear to it to have a physical impairment”, and 30
 - (c) after that sub-paragraph insert –
 - “(2) Subsections (1A) to (1C) of section 3 apply for the purposes of sub-paragraph (1) as they apply for the purposes of that section.” 35
- (12) In paragraph 10 –
- (a) in sub-paragraph (1)(a) after “provided” insert “in pursuance of arrangements made”,
 - (b) in sub-paragraph (2) –
 - (i) for “The Secretary of State may” substitute “The commissioning consortium may make arrangements for”, 40
 - (ii) in paragraph (a) for “adapt” substitute “the adaptation of”,
 - (iii) in paragraph (b) for “maintain and repair” substitute “the maintenance and repair of”,
 - (iv) in paragraph (c) for “take out” substitute “the taking out of”, 45
 - (v) in that paragraph for “pay” substitute “the payment of”,

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- (vi) in paragraph (d) for “provide” (in each place it occurs) substitute “the provision of”, and
 - (vii) in that paragraph for “execute” substitute “the execution of”,
 - (c) in sub-paragraph (3) for “The Secretary of State” substitute “A commissioning consortium”, and 5
 - (d) in sub-paragraph (5) for “the Secretary of State” substitute “the commissioning consortium”.
- (13) In paragraph 12 (provision of a microbiological service) –
- (a) in sub-paragraph (1) –
 - (i) omit paragraph (a) and the word “and” immediately following it, 10
 - (ii) in paragraph (b) omit “other”, and
 - (iii) in that paragraph for “that service” substitute “a microbiological service provided under section 2A”, and
 - (b) omit sub-paragraph (2). 15
- (14) For paragraph 13 and the cross-heading preceding it substitute –
- “Powers in relation to research etc.*
- “13 (1) The Secretary of State, the Board or a commissioning consortium may conduct, commission or assist the conduct of research into –
- (a) any matters relating to the causation, prevention, diagnosis or treatment of illness, and 20
 - (b) any such other matters connected with any service provided under this Act as the Secretary of State, the Board or the consortium (as the case may be) considers appropriate.
- (2) A local authority may conduct, commission or assist the conduct of research for any purpose connected with the exercise of its functions in relation to the health service. 25
- (3) The Secretary of State, the Board, a commissioning consortium or a local authority may for any purpose connected with the exercise of its functions in relation to the health service – 30
- (a) obtain and analyse data or other information;
 - (b) obtain advice from persons with appropriate professional expertise.
- (4) The power under sub-paragraph (1) or (2) to assist any person to conduct research includes power to do so by providing financial assistance or making the services of any person or other resources available. 35
- (5) In this paragraph, “local authority” has the same meaning as in section 2B.”

14 Regulations as to the exercise by local authorities of certain public health functions

- (1) After section 6B of the National Health Service Act 2006 insert –

“Regulations as to the exercise of functions

6C Regulations as to the exercise by local authorities of certain public health functions 5

- (1) Regulations may require a local authority to exercise any of the public health functions of the Secretary of State (so far as relating to the protection of the public in the authority’s area) by taking such steps as may be prescribed. 10
- (2) Regulations may require a local authority to exercise its public health functions by taking such steps as may be prescribed.
- (3) The making of regulations under subsection (1) does not prevent the Secretary of State from taking any step that a local authority is required to take under the regulations. 15
- (4) In this section, “local authority” has the same meaning as in section 2B.”
- (2) In section 272 of that Act (orders, regulations, rules and directions), in subsection (6) before paragraph (za) insert –
“(zza) regulations under section 6C(1) or (2).”

15 Regulations relating to EU obligations 20

After section 6C of the National Health Service Act 2006 insert –

“6D Regulations relating to EU obligations

- (1) Regulations may require the Board or a commissioning consortium to exercise a specified EU health function.
- (2) In subsection (1) – 25
- (a) “EU health function” means any function exercisable by the Secretary of State for the purpose of implementing EU obligations that concern, or are connected to, the health service, other than a function of making subordinate legislation (within the meaning of the Interpretation Act 1978), and 30
- (b) “specified” means specified in the regulations.
- (3) The Secretary of State may give directions to the Board or a commissioning consortium about its exercise of any of its functions under regulations under subsection (1).
- (4) The Secretary of State may, for the purpose of securing compliance by the United Kingdom with EU obligations, give directions to the Board or a commissioning consortium about the exercise of any of its functions.” 35

16 Regulations as to the exercise of functions by the Board or consortia

(1) After section 6D of the National Health Service Act 2006 insert –

“6E Regulations as to the exercise of functions by the Board or consortia

- (1) Regulations may impose requirements (to be known as “standing rules”) in accordance with this section on the Board or on commissioning consortia. 5
- (2) The regulations may, in relation to the commissioning functions of the Board or consortia, make provision –
- (a) requiring the Board or consortia to arrange for specified treatments or other specified services to be provided or to be provided in a specified manner or within a specified period; 10
 - (b) as to the arrangements that the Board or consortia must make for the purpose of making decisions as to –
 - (i) the treatments or other services that are to be provided;
 - (ii) the manner in which or period within which specified treatments or other specified services are to be provided; 15
 - (iii) the persons to whom specified treatments or other specified services are to be provided;
 - (c) as to the arrangements that the Board or consortia must make for enabling persons to whom specified treatments or other specified services are to be provided to make choices with respect to specified aspects of them. 20
- (3) Regulations by virtue of paragraph (b) of subsection (2) may, in particular, make provision –
- (a) requiring the Board or a consortium to take specified steps before making decisions as to the matters mentioned in that paragraph; 25
 - (b) as to reviews of, or appeals from, such decisions.
- (4) The regulations may –
- (a) specify matters for which provision must be made in commissioning contracts entered into by the Board or consortia; 30
 - (b) require the Board to draft terms and conditions making provision for those matters;
 - (c) require the Board or consortia to incorporate the terms and conditions drafted by virtue of paragraph (b) in commissioning contracts entered into by the Board or (as the case may be) consortia. 35
- (5) The regulations must –
- (a) require the Board to draft such terms and conditions as the Board considers are, or might be, appropriate for inclusion in commissioning contracts entered into by the Board or consortia (other than terms and conditions that the Board is required to draft by virtue of subsection (4)(a)); 40
 - (b) authorise the Board to require consortia to incorporate terms and conditions prepared by virtue of paragraph (a) in their commissioning contracts; 45
 - (c) authorise the Board to draft model commissioning contracts.

-
- (6) The regulations may require the Board to consult prescribed persons before exercising any of its functions by virtue of subsection (4)(b) or (5).
- (7) The regulations may require the Board or consortia in the exercise of any of its or their functions – 5
- (a) to provide information of a specified description to specified persons in a specified manner;
 - (b) to act in a specified manner for the purpose of securing compliance with EU obligations;
 - (c) to do such other things as the Secretary of State considers necessary for the purposes of the health service. 10
- (8) The regulations may not impose a requirement on only one consortium.
- (9) If regulations under this section are made so as to come into force on a day other than 1 April, the Secretary of State must – 15
- (a) publish a statement explaining the reasons for making the regulations so as to come into force on such a day, and
 - (b) lay the statement before Parliament.
- (10) In this section –
- (a) “commissioning contracts”, in relation to the Board or commissioning consortia, means contracts entered into by the Board or (as the case may be) consortia in the exercise or its or their commissioning functions; 20
 - (b) “commissioning functions”, in relation to the Board or commissioning consortia, means the functions of the Board or (as the case may be) consortia in arranging for the provision of services as part of the health service; 25
 - (c) “specified” means specified in the regulations.”
- (2) In section 272 of that Act (orders, regulations, rules and directions), in subsection (6) after paragraph (zza) insert – 30
- “(zzb) regulations under section 6E, except where they do not include provision by virtue of subsection (7)(c) of that section.”.

17 Functions of Special Health Authorities

- (1) Section 7 of the National Health Service Act 2006 (distribution of health service functions) is amended as follows. 35
- (2) For subsection (1) substitute –
- “(1) The Secretary of State may direct a Special Health Authority to exercise any functions of the Secretary of State or any other person which relate to the health service in England and are specified in the direction.
- (1A) Before exercising the power in subsection (1) in relation to a function of a person other than the Secretary of State, the Secretary of State must consult that person. 40
- (1B) Regulations may provide that a Special Health Authority specified in the regulations is to have such additional functions in relation to the health service in England as may be so specified.” 45

- (3) Omit subsections (2) and (3).
- (4) For the heading to that section, and for the cross-heading preceding it, substitute “Functions of Special Health Authorities”.
- (5) In section 272 of that Act (orders, regulations, rules and directions), in subsection (6) after paragraph (zzb) insert – 5
“(zzc) regulations under section 7(1B);”.

18 Exercise of public health functions of the Secretary of State

After section 7 of the National Health Service Act 2006 insert –

“Exercise of Secretary of State’s public health functions

7A Exercise of Secretary of State’s public health functions 10

- (1) The Secretary of State may arrange for a body mentioned in subsection (2) to exercise any of the public health functions of the Secretary of State.
- (2) Those bodies are – 15
 - (a) the Board;
 - (b) a commissioning consortium;
 - (c) a local authority (within the meaning of section 2B).
- (3) The power conferred by subsection (1) includes power to arrange for such a body to exercise any functions of the Secretary of State that are exercisable in connection with those functions (including the powers 20 conferred by section 12).
- (4) Where the Secretary of State arranges (under subsection (1)) for the Board to exercise a function, the Board may arrange for a commissioning consortium to exercise that function.
- (5) Powers under this section may be exercised under such terms as may 25 be agreed, including terms as to payment.”

Further provision about the Board

19 The NHS Commissioning Board: further provision

- (1) In Part 2 of the National Health Service Act 2006 (health service bodies), before Chapter 1 insert – 30

“CHAPTER A1

THE NATIONAL HEALTH SERVICE COMMISSIONING BOARD

Secretary of State’s mandate to the Board

13A Mandate to Board

- (1) Before the start of each financial year, the Secretary of State must 35 publish and lay before Parliament a document to be known as “the mandate”.

- (2) The Secretary of State must specify in the mandate –
 - (a) the objectives that the Secretary of State considers the Board should seek to achieve in the exercise of its functions during that financial year, and
 - (b) any requirements that the Secretary of State considers it necessary to impose on the Board for the purpose of ensuring that it achieves those objectives. 5
 - (3) The Secretary of State must also specify in the mandate –
 - (a) the amount that the Secretary of State has decided to allot to the Board under section 223B in respect of that year, and 10
 - (b) the amount that the Secretary of State has decided to specify as the Board’s resource allocation in respect of that year under section 223C.
 - (4) The Secretary of State may specify in the mandate –
 - (a) any objectives that the Secretary of State considers the Board should seek to achieve in the exercise of its functions during any subsequent financial years; 15
 - (b) any requirements that the Secretary of State considers it necessary to impose on the Board for the purpose of ensuring that it achieves those objectives; 20
 - (c) any proposals that the Secretary of State has as to the amount that the Secretary of State will allot to the Board under section 223B in respect of subsequent financial years;
 - (d) any proposals that the Secretary of State has as to the amount that the Secretary of State will specify as the Board’s resource allocation under section 223C in respect of subsequent financial years. 25
 - (5) The Secretary of State may also specify in the mandate the matters by reference to which the Secretary of State proposes to assess the Board’s performance in relation to the first financial year to which the mandate relates. 30
 - (6) The Secretary of State may not specify in the mandate an objective or requirement about the exercise of the Board’s functions in relation to only one commissioning consortium.
 - (7) The Board must – 35
 - (a) seek to achieve the objectives specified in the mandate, and
 - (b) comply with any requirements so specified.
 - (8) Before specifying any objectives or requirements in the mandate, the Secretary of State must consult –
 - (a) the Board, and 40
 - (b) such other persons as the Secretary of State considers appropriate.
 - (9) In this section, “financial year” includes the period which begins on the day the Board is established and ends on the following 31 March.
- 13B The mandate: supplemental provision 45**
- (1) The Secretary of State must keep the Board’s performance in achieving any objectives or requirements specified in the mandate under review.

- (2) If the Secretary of State makes a new allotment under section 223B(3) or varies the Board’s resource allocation under section 223C(2), the Secretary of State must revise the mandate accordingly.
- (3) The Secretary of State may make any other revision to the mandate only if – 5
- (a) the Board agrees to the revision,
 - (b) a parliamentary general election takes place, or
 - (c) the Secretary of State considers that there are exceptional circumstances that make the revision necessary.
- (4) If the Secretary of State revises the mandate, the Secretary of State must – 10
- (a) publish the mandate (as so revised), and
 - (b) lay it before Parliament, together with an explanation of the reasons for making the revision.
- General duties of the Board* 15
- 13C Duty as to effectiveness, efficiency etc.**
- The Board must exercise its functions effectively, efficiently and economically.
- 13D Duty as to improvement in quality of services**
- (1) The Board must exercise its functions with a view to securing continuous improvement in the quality of services provided to individuals for or in connection with – 20
- (a) the prevention, diagnosis or treatment of illness, or
 - (b) the protection or improvement of public health.
- (2) In discharging its duty under subsection (1), the Board must, in particular, act with a view to securing continuous improvement in the the outcomes that are achieved from the provision of the services. 25
- (3) The outcomes relevant for the purposes of subsection (2) include, in particular, outcomes which show – 30
- (a) the effectiveness of the services,
 - (b) the safety of the services, and
 - (c) the quality of the experience undergone by patients.
- (4) In discharging its duty under subsection (1), the Board must have regard to – 35
- (a) any document published by the Secretary of State for the purposes of this section, and
 - (b) the quality standards prepared by NICE under section 218 of the Health and Social Care Act 2011.
- 13E Duty as to promoting autonomy**
- In exercising its functions, the Board must, so far as is consistent with the interests of the health service, act with a view to securing – 40
- (a) that any other person exercising functions in relation to the health service or providing services for its purposes is free to

exercise those functions or provide those services in the manner it considers most appropriate, and

- (b) that unnecessary burdens are not imposed on any such person.

13F Duty as to reducing inequalities, promoting patient involvement etc.

- (1) The Board must, in the exercise of its functions, have regard to the need to – 5
- (a) reduce inequalities between patients with respect to their ability to access health services;
 - (b) reduce inequalities between patients with respect to the outcomes achieved for them by the provision of health services; 10
 - (c) promote the involvement of patients and their carers in decisions about the provision of health services to them;
 - (d) enable patients to make choices with respect to aspects of health services provided to them.
- (2) In this section, “health services” means services provided as part of the health service. 15

13G Duty to obtain appropriate advice

The Board must make arrangements with a view to securing that it obtains advice appropriate for enabling it effectively to discharge its functions from persons with professional expertise relating to the physical or mental health of individuals. 20

13H Duty to promote innovation

- (1) The Board must, in the exercise of its functions, promote innovation in the provision of health services (including innovation in the arrangements made for their provision). 25
- (2) The Board may make payments as prizes to promote innovation in the provision of health services.
- (3) 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 section 19 of the Health and Social Care Act 2011). 30
- (4) In this section “health services” means services provided as part of the health service.

13I Duty in respect of research 35

The Board must, in the exercise of its functions, have regard to the need to promote –

- (a) research on matters relevant to the health service, and
- (b) the use in the health service of evidence obtained from research.

13J Duty to encourage integrated working 40

- (1) The Board must, for the purpose of advancing the health and wellbeing of the people of England, exercise its functions with a view to encouraging commissioning consortia to work closely with local authorities in arranging for the provision of services.

- (2) The duty imposed by subsection (1) includes, in particular, a duty to encourage commissioning consortia to enter into arrangements with local authorities in pursuance of regulations under section 75.

13K Duty to have regard to impact on services in certain areas

- (1) In making commissioning decisions, the Board must have regard to the likely impact of those decisions on the provision of health services to persons who reside in an area of Wales or Scotland that is close to the border with England. 5
- (2) In this section –
- “commissioning decisions”, in relation to the Board, means decisions about the carrying out of its functions in arranging for the provision of health services; 10
- “health services” means services that are (or are to be) provided as part of the health service.

Public involvement 15

13L Public involvement and consultation by the Board

- (1) This section applies in relation to any health services which are, or are to be, provided pursuant to arrangements made by the Board (“commissioning arrangements”).
- (2) The Board must make arrangements to secure that individuals to whom the services are being or may be provided are involved (whether by being consulted or provided with information or in other ways) – 20
- (a) in the planning of the commissioning arrangements by the Board,
- (b) in the development and consideration of proposals by the Board for changes in the commissioning arrangements where the implementation of the proposals would have a significant impact on the manner in which the services are delivered to the individuals or the range of health services available to them, and 25
- (c) in decisions of the Board affecting the operation of the commissioning arrangements where the implementation of the decisions would (if made) have such an impact. 30
- (3) The reference in subsection (2)(b) to the delivery of services is a reference to their delivery at the point when they are received by users. 35
- (4) In this section, “health services” means any services that are (or are to be) provided as part of the health service.

Functions in relation to information

13M Information on safety of services provided by the health service

- (1) The Board must establish and operate systems for collecting and analysing information relating to the safety of the services provided by the health service. 40

- (2) The Board must make information collected by virtue of subsection (1), and any other information obtained by analysing it, available to such persons as the Board considers appropriate.
- (3) The Board may impose charges, calculated on such basis as it considers appropriate, in respect of information made available by it under subsection (2). 5
- (4) The Board must give advice and guidance, to such persons as it considers appropriate, for the purpose of maintaining and improving the safety of the services provided by the health service.
- (5) The Board must monitor the effectiveness of the advice and guidance given by it under subsection (4). 10
- (6) A commissioning consortium must have regard to any advice or guidance given to it under subsection (4).
- (7) The Board may arrange for any other person (including another NHS body) to exercise any of the Board’s functions under this section. 15

13N Guidance in relation to processing of information

- (1) The Board must publish guidance for registered persons on the practice to be followed by them in relation to the processing of –
 - (a) patient information, and
 - (b) any other information obtained or generated in the course of the provision of the health service. 20
- (2) Registered persons who carry on an activity which involves, or is connected with, the provision of health care must have regard to any guidance published under this section.
- (3) In this section, “patient information”, “processing” and “registered person” have the same meanings as in section 20A of the Health and Social Care Act 2008. 25

Business plan and report

13O Business plan

- (1) Before the start of each financial year, the Board must publish a business plan setting out how it proposes to exercise its functions in that year and each of the next two financial years. 30
- (2) The business plan must, in particular, explain how the Board proposes to achieve the objectives, and comply with the requirements, specified in the mandate for the first financial year to which the plan relates. 35
- (3) The Board may revise the plan.
- (4) The Board must publish any revised plan.
- (5) In this section and section 13P, “financial year” includes the period which begins on the day the Board is established and ends on the following 31 March. 40

13P Annual report

- (1) As soon as practicable after the end of each financial year, the Board must publish an annual report on how it has exercised its functions during the year.
- (2) The annual report must, in particular, contain an assessment of – 5
- (a) the extent to which it met any objectives or requirements specified in the mandate for that year,
 - (b) the extent to which it gave effect to the proposals for that year in its business plan, and
 - (c) how effectively it discharged its duties under sections 13D and 13L. 10
- (3) The Board must –
- (a) lay the annual report before Parliament, and
 - (b) once it has done so, send a copy of it to the Secretary of State.
- (4) The Secretary of State must, having considered the annual report, set out in a letter to the Board the Secretary of State’s assessment of the Board’s performance of its functions in the financial year in question. 15
- (5) The letter must, in particular, contain the Secretary of State’s assessment of the matters mentioned in subsection (2)(a) to (c).
- (6) The Secretary of State must – 20
- (a) publish the letter to the Board, and
 - (b) lay it before Parliament.

*Additional powers***13Q Establishment of pooled funds**

- (1) The Board and one or more commissioning consortia may establish and maintain a pooled fund. 25
- (2) A pooled fund is a fund –
- (a) which is made up of contributions by the bodies which established it, and
 - (b) out of which payments may be made, with the agreement of those bodies, towards expenditure incurred in the discharge of any of their commissioning functions. 30
- (3) In this section, “commissioning functions” means functions in arranging for the provision of services as part of the health service.

13R Board’s power to generate income, etc. 35

- (1) The Board has power to do anything specified in section 7(2) of the Health and Medicines Act 1988 (provision of goods, services, etc.) for the purpose of making additional income available for improving the health service.
- (2) The Board may exercise a power conferred by subsection (1) only to the extent that its exercise does not to any significant extent interfere with the performance by the Board of its functions. 40

13S Board’s incidental powers: further provision

The power conferred on the Board by section 2 includes in particular power to –

- (a) enter into agreements,
- (b) acquire and dispose of property, and 5
- (c) accept gifts (including property to be held on trust for the purposes of the Board).

Exercise of functions of Board

13T Exercise of functions

- (1) This section applies to functions exercisable by the Board under or by virtue of this Act or any prescribed provision of any other Act. 10
- (2) The Board may arrange for any such function to be exercised by or jointly with –
 - (a) a Special Health Authority,
 - (b) a commissioning consortium, or 15
 - (c) such other body as may be prescribed.
- (3) Regulations may provide that the power in subsection (2) does not apply in relation to a function of a prescribed description.
- (4) Where any functions are (by virtue of subsection (2)) exercisable jointly by the Board and another body, they may be exercised by a joint committee of the Board and the other body. 20
- (5) Arrangements under this section may be on such terms and conditions (including terms as to payment) as may be agreed between the Board and the other party to the arrangements.

Power to confer additional functions 25

13U Power to confer additional functions on the Board

- (1) Regulations may provide that the Board is to have such additional functions in relation to the health service as may be specified in the regulations.
- (2) A function may be specified in regulations under subsection (1) only if the function is connected to another function of the Board. 30

Intervention powers

13V Failure by the Board to discharge any of its functions

- (1) The Secretary of State may give a direction to the Board if the Secretary of State considers that the Board –
 - (a) is failing or has failed to discharge any of its functions, or
 - (b) is failing or has failed properly to discharge any of its functions. 35
- (2) A direction under subsection (1) may direct the Board to discharge such of those functions, and in such manner and within such period or periods, as may be specified in the direction. 40

- (3) If the Board fails to comply with a direction under subsection (1), the Secretary of State may –
- (a) discharge the functions to which it relates, or
 - (b) make arrangements for any other person to discharge them on the Secretary of State’s behalf.
- 5

Disclosure of information

13W Permitted disclosures of information

- (1) The Board may disclose information obtained by it in the exercise of its functions if –
- (a) the information has previously been lawfully disclosed to the public, 10
 - (b) the disclosure is made under or pursuant to regulations under section 113 or 114 of the Health and Social Care (Community Health and Standards) Act 2003 (complaints about health care or social services), 15
 - (c) the disclosure is made in accordance with any enactment or court order,
 - (d) the disclosure is necessary or expedient for the purposes of protecting the welfare of any individual,
 - (e) the disclosure is made to any person in circumstances where it is necessary or expedient for the person to have the information for the purpose of exercising functions of that person under any enactment, 20
 - (f) the disclosure is made for the purpose of facilitating the exercise of any of the Board’s functions, 25
 - (g) the disclosure is made in connection with the investigation of a criminal offence (whether or not in the United Kingdom), or
 - (h) the disclosure is made for the purpose of criminal proceedings (whether or not in the United Kingdom).
- (2) This section has effect notwithstanding any rule of common law which would otherwise prohibit or restrict the disclosure. 30

Interpretation

13X Interpretation

In this Chapter, “the health service” means the health service in England.” 35

- (2) In section 272 of that Act (orders, regulations, rules and directions), in subsection (6) after paragraph (za) insert –
- “(zb) regulations under section 13U;”.

20 Financial arrangements for the Board

Before the cross-heading preceding section 224 of the National Health Service 40

Act 2006 insert—

“The Board

223B Funding of the Board

- (1) *The Secretary of State must pay to the Board in respect of each financial year sums not exceeding the amount allotted for that year by the Secretary of State towards meeting the expenditure of the Board which is attributable to the performance by it of its functions in that year.* 5
- (2) An amount is allotted to the Board for a financial year under this section when the Secretary of State publishes the mandate for that year (see section 13A). 10
- (3) *The Secretary of State may make a new allotment under this section increasing or reducing the allotment previously so made only if—*
 - (a) *the Board agrees to the change, or*
 - (b) *the Secretary of State considers that there are exceptional circumstances that make a new allotment necessary.* 15
- (4) The Secretary of State may give directions to the Board as to—
 - (a) the maximum amount that the Board and commissioning consortia (taken together) may spend on prescribed matters relating to administration during the financial year, and
 - (b) the maximum amount that the Board may spend on any such matters. 20
- (5) The Secretary of State may give directions to the Board with respect to the payment of sums by it to the Secretary of State in respect of charges or other sums referable to the valuation or disposal of assets.
- (6) Sums falling to be paid to the Board under this section are payable subject to such conditions as to records, certificates or otherwise as the Secretary of State may determine. 25
- (7) For the purposes of subsection (4) expenditure is to be disregarded if it is to be met otherwise than from sums paid under subsection (1).
- (8) In this section and sections 223C to 223F, “financial year” includes the period which begins on the day the Board is established and ends on the following 31 March. 30

223C Use of resources by the Board

- (1) The Secretary of State may direct that the Board’s use of resources in a financial year must not exceed a specified amount (the “resource allocation”). 35
- (2) The Secretary of State may vary the specified amount only if—
 - (a) the Board agrees to the change, or
 - (b) the Secretary of State considers that there are exceptional circumstances that make the variation necessary. 40
- (3) In this section and in section 223E, a reference to the use of resources is a reference to their expenditure, consumption or reduction in value.

223D Financial duties of the Board: general

- (1) The Board must, in respect of each financial year, perform its functions so as to ensure that its expenditure which is attributable to the performance by it of its functions in that year does not exceed the aggregate of – 5
- (a) the amount allotted to it for that year under section 223B,
 - (b) any sums received by it in that year under any provision of this Act (other than sums received by it under section 223B), and
 - (c) any sums received by it in that year otherwise than under this Act for the purpose of enabling it to defray such expenditure. 10
- (2) The Secretary of State may by directions determine whether expenditure by the Board of a description specified in the directions must, or must not, be treated for the purposes of this section as expenditure within subsection (1).
- (3) The Secretary of State may by directions determine the extent to which, and the circumstances in which, sums received by the Board under section 223B but not yet spent must be treated for the purposes of this section as part of the expenditure of the Board, and to which financial year's expenditure they must be attributed. 15
- (4) The Secretary of State may by directions require the Board to use banking facilities specified in the direction for any purposes so specified. 20

223E Financial duties of the Board: use of resources

- (1) The Board must ensure that the use of its resources in a financial year does not exceed the resource allocation specified in relation to that year by the Secretary of State under section 223C. 25
- (2) For the purposes of subsection (1) the Secretary of State may give directions –
- (a) specifying uses of resources which must, or must not, be taken into account; 30
 - (b) specifying descriptions of resources which must, or must not, be taken into account.

223F Financial duties of the Board: restriction on certain types of expenditure

- (1) The Board must ensure that its capital expenditure in respect of a financial year does not exceed such sum as the Secretary of State may specify in relation to that year. 35
- (2) The Board must ensure that its revenue expenditure in respect of a financial year does not exceed such sum as the Secretary of State may specify in relation to that year. 40
- (3) The Board must ensure that its expenditure in respect of a financial year on prescribed matters relating to administration does not (in total) exceed the sum specified by the Secretary of State under section 223B(4)(b) in relation to that year.
- (4) The Secretary of State may vary any sum specified for the purposes of this section. 45

- (5) The Secretary of State may by directions determine whether expenditure by the Board of a description specified in the directions must, or must not, be treated for the purposes of this section as expenditure within subsection (1) or (2).
- (6) For the purposes of this section, expenditure is to be disregarded if it is met otherwise than from sums paid to the Board under section 223B. 5

223G Power to establish contingency fund

- (1) The Board may use a proportion of the sums paid to it under section 223B to establish a contingency fund.
- (2) The Board may make a payment out of the fund where the payment is necessary in order to enable – 10
- (a) the Board to discharge any of its commissioning functions, or
 - (b) a commissioning consortium to discharge any of its functions.
- (3) The Board must publish guidance as to how it proposes to exercise its powers to make payments out of the contingency fund. 15
- (4) In this section, “commissioning functions” means functions in arranging for the provision of services as part of the health service.”

Further provision about commissioning consortia

21 Commissioning consortia: establishment etc.

- (1) After Chapter A1 of Part 2 of the National Health Service Act 2006 insert – 20

“CHAPTER A2

COMMISSIONING CONSORTIA

Establishment of commissioning consortia

14A General duties of Board in relation to commissioning consortia

- (1) The Board must exercise its functions under this Chapter so as to ensure that at any time after the day specified in writing by the Secretary of State for the purposes of this section each provider of primary medical services is a member of a commissioning consortium. 25
- (2) The Board must exercise its functions under this Chapter so as to ensure that at any time after the day so specified the areas specified in the constitutions of commissioning consortia – 30
- (a) together cover the whole of England, and
 - (b) do not coincide or overlap.
- (3) For the purposes of this Chapter, “provider of primary medical services” means a person who is a party to an arrangement mentioned in subsection (4). 35
- (4) The arrangements mentioned in this subsection are –
- (a) a general medical services contract to provide primary medical services of a prescribed description,

-
- (b) arrangements under section 83(2) for the provision of primary medical services of a prescribed description,
 - (c) section 92 arrangements for the provision of services of primary medical services of a prescribed description.
- (5) Where a person who is a provider of primary medical services is a party to more than one arrangement mentioned in subsection (4), the person is to be treated for the purposes of this Chapter as a separate provider of primary medical services in respect of each of those arrangements. 5
 - (6) Where two or more individuals practising in partnership are parties to an arrangement mentioned in subsection (4), the partnership is to be treated for the purposes of this Chapter as a provider of primary medical services (and the individuals are not to be so treated). 10
 - (7) Where two or more individuals are parties to an arrangement mentioned in subsection (4) but are not practising in partnership, those persons collectively are to be treated for the purposes of this Chapter as a provider of primary medical services (and the individuals are not to be so treated). 15
- 14B Applications for the establishment of commissioning consortia**
- (1) An application for the establishment of a commissioning consortium may be made to the Board. 20
 - (2) The application may be made by any two or more persons each of whom—
 - (a) is or wishes to be a provider of primary medical services, and
 - (b) wishes to be a member of the commissioning consortium.
 - (3) The application must be accompanied by— 25
 - (a) a copy of the proposed constitution of the commissioning consortium,
 - (b) the name of the person whom the consortium wishes the Board to appoint as its accountable officer (as to which see paragraph 9 of Schedule 1A), and 30
 - (c) such other information as the Board may specify in a document published for the purposes of this section.
 - (4) At any time before the Board determines the application—
 - (a) a person who is or wishes to be a provider of primary medical services (and wishes to be a member of the consortium) may become a party to the application, with the agreement of the Board and the existing applicants; 35
 - (b) any of the applicants may withdraw.
 - (5) At any time before the Board determines the application, the applicants may modify the proposed constitution with the agreement of the Board. 40
 - (6) Part 1 of Schedule 1A makes provision about the constitution of a commissioning consortium.
- 14C Determination of applications**
- (1) The Board must grant an application under section 14B if it is satisfied as to the following matters. 45

- (2) Those matters are –
- (a) that the constitution complies with the requirements of Part 1 of Schedule 1A and is otherwise appropriate,
 - (b) that each of the members specified in the constitution will be a provider of primary medical services on the date the consortium is established, 5
 - (c) that the area specified in the constitution is appropriate,
 - (d) that it would be appropriate for the Board to appoint, as the accountable officer of the consortium, the person named by the consortium under section 14B(3)(b), 10
 - (e) that the applicants have made appropriate arrangements to ensure that the commissioning consortium will be able to discharge its functions, and
 - (f) such other matters as may be prescribed.
- (3) Regulations may make provision – 15
- (a) as to factors which the Board must or may take into account in deciding whether it is satisfied as to the matters mentioned in subsection (2);
 - (b) as to the procedure for the making and determination of applications under section 14B. 20

14D Effect of grant of application

- (1) If the Board grants an application under section 14B –
- (a) a commissioning consortium is established, and
 - (b) the proposed constitution has effect as the commissioning consortium’s constitution. 25
- (2) Part 2 of Schedule 1A makes further provision about commissioning consortia.

Variation of constitution

14E Applications for variation of constitution

- (1) A commissioning consortium may apply to the Board to vary its constitution (including doing so by varying its area or its list of members). 30
- (2) If the Board grants the application, the constitution of the commissioning consortium has effect subject to the variation.
- (3) Regulations may make provision – 35
- (a) as to the circumstances in which the Board must or may grant, or must or may refuse, applications under this section;
 - (b) as to factors which the Board must or may take into account in determining whether to grant such applications;
 - (c) as to the procedure for the making and determination of such applications. 40

14F Variation of constitution otherwise on application

- (1) The Board may vary the area specified in the constitution of a commissioning consortium.

- (2) The Board may –
- (a) add any person who is a provider of primary medical services to the list of members specified in the constitution of a commissioning consortium;
 - (b) remove any person from such a list. 5
- (3) The power conferred by subsection (1) or (2) is exercisable if –
- (a) the consortium consents to the variation, or
 - (b) the Board considers that the variation is necessary for the purpose of discharging any of its duties under section 14A.
- (4) Before varying the constitution of a commissioning consortium under subsection (1) or (2), the Board must consult – 10
- (a) that consortium, and
 - (b) any other consortium that the Board thinks might be affected by the variation.
- (5) Regulations may – 15
- (a) confer powers on the Board to vary the constitution of a commissioning consortium;
 - (b) make provision as to the circumstances in which those powers are exercisable and the procedure to be followed before they are exercised. 20

Mergers, dissolution etc.

14G Mergers

- (1) Two or more commissioning consortia may apply to the Board for –
- (a) those consortia to be dissolved, and
 - (b) another consortium to be established under this section. 25
- (2) An application under this section must be accompanied by –
- (a) a copy of the proposed constitution of the commissioning consortium,
 - (b) the name of the person whom the consortium wishes the Board to appoint as its accountable officer, and
 - (c) such other information as the Board may specify in a document published for the purposes of this section. 30
- (3) The applicants may, with the agreement of the Board, modify the application or the proposed constitution at any time before the Board determines the application. 35
- (4) Sections 14C and 14D(1) apply in relation to an application under this section as they apply in relation to an application under section 14B.

14H Dissolution

- (1) A commissioning consortium may apply to the Board for the consortium to be dissolved. 40
- (2) Regulations may make provision –
- (a) as to the circumstances in which the Board must or may grant, or must or may refuse, applications under this section;

- (b) as to factors which the Board must or may take into account in determining whether to grant such applications;
- (c) as to the procedure for the making and determination of such applications.

Supplemental provision about variation, mergers etc. 5

14I Transfers in connection with variation, merger, dissolution etc.

- (1) The Board may make a property transfer scheme or a staff transfer scheme in connection with—
 - (a) the variation of the constitution of a commissioning consortium under section 14E or 14F, or 10
 - (b) the dissolution of a commissioning consortium under section 14G or 14H.
- (2) A property transfer scheme is a scheme for the transfer from the commissioning consortium of any property, rights or liabilities, other than rights or liabilities under or in connection with a contract of employment, to the Board or another commissioning consortium. 15
- (3) A staff transfer scheme is a scheme for the transfer from the commissioning consortium of any rights or liabilities under or in connection with a contract of employment to the Board or another commissioning consortium. 20
- (4) Part 3 of Schedule 1A makes further provision about property transfer schemes and staff transfer schemes.

14J Guidance about the establishment of commissioning consortia etc.

- The Board may publish guidance as to—
- (a) the making of applications under section 14B for the establishment of a commissioning consortium, including guidance on the form, content or publication of the proposed constitution; 25
 - (b) the making of applications under section 14E, 14G or 14H.”
- (2) After Schedule 1 to the National Health Service Act 2006 insert the Schedule set out in Schedule 2 to this Act. 30

22 Commissioning consortia: general duties etc.

After section 14J of the National Health Service Act 2006 insert—

General duties of consortia

14K Duty as to effectiveness, efficiency etc. 35

Each commissioning consortium must exercise its functions effectively, efficiently and economically.

14L Duty as to improvement in quality of services

- (1) Each commissioning consortium must exercise its functions with a view to securing continuous improvement in the quality of services 40

- provided to individuals for or in connection with the prevention, diagnosis or treatment of illness.
- (2) In discharging its duty under subsection (1), a commissioning consortium must, in particular, act with a view to securing continuous improvement in the outcomes that are achieved from the provision of the services. 5
- (3) The outcomes relevant for the purposes of subsection (2) include, in particular, outcomes which show –
- (a) the effectiveness of the services,
 - (b) the safety of the services, and 10
 - (c) the quality of the experience undergone by patients.
- (4) In discharging its duty under subsection (1), a commissioning consortium must have regard to any guidance published under section 14V.
- 14M Duty in relation to quality of primary medical services 15**
- Each commissioning consortium must assist and support the Board in discharging its duty under section 13D so far as relating to securing continuous improvement in the quality of primary medical services.
- 14N Duties as to reducing inequalities, promoting patient involvement etc.**
- (1) Each commissioning consortium must, in the exercise of its functions, have regard to the need to –
- (a) reduce inequalities between patients with respect to their ability to access health services;
 - (b) reduce inequalities between patients with respect to the outcomes achieved for them by the provision of health services; 25
 - (c) promote the involvement of patients and their carers in decisions about the provision of health services to them;
 - (d) enable patients to make choices with respect to aspects of services provided to them as part of the health service.
- (2) In this section, “health services” means services provided as part of the health service. 30
- 14O Duty to obtain appropriate advice**
- Each commissioning consortium must make arrangements with a view to securing that it obtains advice appropriate for enabling it effectively to discharge its functions from persons with professional expertise relating to the physical or mental health of individuals. 35
- Public involvement*
- 14P Public involvement and consultation by commissioning consortia**
- (1) This section applies in relation to any health services which are, or are to be, provided pursuant to arrangements made by a commissioning consortium (“commissioning arrangements”). 40
- (2) The consortium must make arrangements to secure that individuals to whom the services are being or may be provided are involved (whether by being consulted or provided with information or in other ways) –

- (a) in the planning of the commissioning arrangements by the consortium,
 - (b) in the development and consideration of proposals by the consortium for changes in the commissioning arrangements where the implementation of the proposals would have a significant impact on the manner in which the services are delivered to the individuals or the range of health services available to them, and 5
 - (c) in decisions of the consortium affecting the operation of the commissioning arrangements where the implementation of the decisions would (if made) have such an impact. 10
- (3) The Board may publish guidance for commissioning consortia on the discharge of their functions under this section.
- (4) A commissioning consortium must have regard to any guidance published by the Board under subsection (3). 15
- (5) The reference in subsection (2)(b) to the delivery of services is a reference to their delivery at the point when they are received by users.
- (6) In this section, “health services” means any services that are (or are to be) provided as part of the health service.

Arrangements with others 20

14Q Arrangements by consortia in respect of the exercise of functions

- (1) Any two or more commissioning consortia may make arrangements under this section.
- (2) The arrangements may provide for –
- (a) one of the commissioning consortia to exercise any of the commissioning functions of another on its behalf, or 25
 - (b) all the commissioning consortia to exercise any of their commissioning functions jointly.
- (3) For the purposes of the arrangements a commissioning consortium may –
- (a) make payments to another commissioning consortium, or 30
 - (b) make the services of its employees or any other resources available to another commissioning consortium.
- (4) For the purposes of the arrangements, all the consortia may establish and maintain a pooled fund. 35
- (5) A pooled fund is a fund –
- (a) which is made up of contributions by all the consortia, and
 - (b) out of which payments may be made towards expenditure incurred in the discharge of any of the commissioning functions in respect of which the arrangements are made. 40
- (6) In this section, “commissioning functions” means the functions of commissioning consortia in arranging for the provision of services as part of the health service (including the function of making a request to the Board for the purposes of section 14W).

14R Joint exercise of functions with Local Health Boards

- (1) Regulations may provide for any prescribed functions of a commissioning consortium to be exercised jointly with a Local Health Board. 5
- (2) Regulations may provide for any functions that are (by virtue of subsection (1)) exercisable jointly by a commissioning consortium and a Local Health Board to be exercised by a joint committee of the consortium and the Board. 5

*Additional powers of consortia***14S Raising additional income** 10

- (1) A commissioning consortium has power to do anything specified in section 7(2)(a), (b) and (e) to (h) of the Health and Medicines Act 1988 (provision of goods etc.) for the purpose of making additional income available for improving the health service.
- (2) A commissioning consortium may exercise a power conferred by subsection (1) only to the extent that its exercise does not to any significant extent interfere with the performance by the consortium of its functions. 15

14T Power to make grants

- (1) A commissioning consortium may make payments by way of grant to a voluntary organisation which provides or arranges for the provision of services which are similar to the services in respect of which the consortium has functions. 20
- (2) The payments may be made subject to such terms and conditions as the consortium considers appropriate. 25

*Board's functions in relation to consortia***14U Responsibility for payments to providers**

- (1) The Board may publish a document specifying –
- (a) circumstances in which a commissioning consortium is liable to make a payment to a person in respect of services provided by that person in pursuance of arrangements made by another consortium in the discharge of its commissioning functions, and 30
- (b) how the amount of any such payment is to be determined.
- (2) A commissioning consortium is required to make payments in accordance with any document published under subsection (1). 35
- (3) Where a commissioning consortium is required to make a payment by virtue of subsection (2), no other consortium is liable to make it.
- (4) Accordingly, any obligation of another consortium to make the payment ceases to have effect.
- (5) Any sums payable by virtue of subsection (2) may be recovered summarily as a civil debt (but this does not affect any other method of recovery). 40

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- (6) The Board may publish guidance for commissioning consortia for the purpose of assisting them in understanding and applying any document published under subsection (1).
- (7) In this section and section 14V, “commissioning functions” means the functions of commissioning consortia in arranging for the provision of services as part of the health service. 5
- 14V Guidance on commissioning by the Board**
- (1) The Board must publish guidance for commissioning consortia on the discharge of their commissioning functions.
- (2) Each commissioning consortium must have regard to guidance under this section. 10
- (3) The Board may enter into arrangements with another person under which that person assists the Board in the preparation of guidance under this section.
- (4) The Board must consult the Healthwatch England committee of the Care Quality Commission – 15
- (a) before it first publishes guidance under this section, and
 - (b) before it publishes any revised guidance containing changes that are, in the opinion of the Board, significant.
- 14W Exercise of functions by the Board** 20
- (1) The Board may, at the request of a commissioning consortium, exercise on behalf of the consortium –
- (a) any of its functions under section 3 or 3A which are specified in the request, and
 - (b) any other functions of the consortium which are related to the exercise of those functions. 25
- (2) Regulations may provide that the power in subsection (1) does not apply in relation to functions of a prescribed description.
- (3) Arrangements under this section may be on such terms and conditions (including terms as to payment) as may be agreed between the Board and the consortium. 30
- 14X Power of Board to provide assistance or support**
- (1) The Board may provide assistance or support to a commissioning consortium.
- (2) The assistance that may be provided includes – 35
- (a) financial assistance, and
 - (b) making the services of the Board’s employees or any other resources of the Board available to the consortium.
- (3) Assistance or support provided under this section may be provided on such terms and conditions, including terms as to payment, as the Board considers appropriate. 40
- (4) The Board may, in particular, impose restrictions on the use of any financial or other assistance or support provided under this section.

- (5) A commissioning consortium must comply with any restrictions imposed under subsection (4).

Commissioning plans and reports

14Y Commissioning plan

- (1) Before the start of each financial year, each commissioning consortium must prepare a plan setting out how it proposes to exercise its functions in that year. 5
- (2) The plan must, in particular, explain how the consortium proposes to discharge its duties under – 10
- (a) section 14L, and
- (b) sections 223I to 223K.
- (3) In preparing the plan, the commissioning consortium must consult each relevant Health and Wellbeing Board about its views on whether the plan takes proper account of the most recent joint health and wellbeing strategy published by the Health and Wellbeing Board (by virtue of section 180 of the Health and Social Care Act 2011). 15
- (4) Where a Health and Wellbeing Board is consulted under subsection (3) – 20
- (a) the Health and Wellbeing Board must give the consortium its opinion on whether the plan takes proper account of the most recent strategy, and
- (b) the consortium must include a statement of the Health and Wellbeing Board’s opinion in the plan.
- (5) Where a Health and Wellbeing Board is consulted under subsection (3) it may also give the Board its opinion on the matter mentioned in subsection (4)(a). 25
- (6) The commissioning consortium must publish the plan.
- (7) The commissioning consortium must give a copy of the plan to the Board before the date specified by the Board in a direction.
- (8) The commissioning consortium must give a copy of the plan to each relevant Health and Wellbeing Board. 30
- (9) In this section, “relevant Health and Wellbeing Board” means a Health and Wellbeing Board established for an area which coincides with, or includes the whole or any part of, the area of the consortium.
- (10) In this section and section 14Z, “financial year” includes the period which begins on the day the consortium is established and ends on the following 31 March. 35

14Z Reports by commissioning consortia

- (1) In each financial year, a commissioning consortium must prepare a report (an “annual report”) on how it has discharged its functions in the previous financial year. 40
- (2) An annual report must, in particular, explain how the commissioning consortium has discharged its duty under sections 14L and 14P.

- (3) The Board may give directions to commissioning consortia as to the form and content of an annual report.
- (4) A commissioning consortium must give a copy of its annual report to the Board before the date specified by the Board in a direction.
- (5) A commissioning consortium must— 5
 - (a) publish its annual report, and
 - (b) hold a meeting for the purpose of presenting the report to members of the public.

Performance assessment of consortia

14Z1 Performance assessment of consortia 10

- (1) The Board must conduct a performance assessment of each commissioning consortium in respect of each financial year.
- (2) A performance assessment is an assessment of how well the consortium has discharged its functions during that year.
- (3) The assessment must, in particular, include an assessment of how well the consortium has discharged its duties under— 15
 - (a) section 14L, and
 - (b) sections 223I to 223K.
- (4) The Board must, in particular, have regard to— 20
 - (a) any document published by the Secretary of State for the purposes of this section, and
 - (b) any guidance published under section 14V.
- (5) The Board must publish a report in respect of each financial year containing a summary of the results of each performance assessment conducted by the Board in respect of that year. 25
- (6) For the purposes of this section “financial year” includes the period which begins on the day the consortium is established and ends on the following 31 March.

Powers to require information etc.

14Z2 Circumstances in which powers in section 14Z3 and 14Z4 apply 30

- (1) Sections 14Z3 and 14Z4 apply where the Board has reason to believe— 35
 - (a) that the area of a commissioning consortium is no longer appropriate, or
 - (b) that a commissioning consortium might have failed, might be failing or might fail to discharge any of its functions.
- (2) Any reference in subsection (1) to failure to discharge a function includes a reference to failure to discharge it properly.

14Z3 Power to require documents and information etc.

- (1) Where this section applies, the Board may require a person mentioned in subsection (2) to provide to the Board any information, documents, records or other items that the Board considers it necessary or 40

expedient to have for the purposes of any of its functions in relation to the commissioning consortium.

- (2) The persons mentioned in this subsection are –
 - (a) the commissioning consortium if it has possession or control of the item in question; 5
 - (b) any member or employee of the consortium who has possession or control of the item in question.
- (3) A person must comply with a requirement imposed under subsection (1).
- (4) The power conferred by subsection (1) includes power to require that any information, documents or records kept by means of a computer be provided in legible form. 10
- (5) The power conferred by subsection (1) does not include power to require the provision of personal records.
- (6) In subsection (5), “personal records” has the meaning given by section 12 of the Police and Criminal Evidence Act 1984. 15

14Z4 Power to require explanation

- (1) Where this section applies, the Board may require the commissioning consortium to provide it with an explanation of any matter which relates to the exercise by the consortium of any of its functions, including an explanation of how the consortium is proposing to exercise any of its functions. 20
- (2) The Board may require the explanation to be given –
 - (a) orally at such time and place as the Board may specify, or
 - (b) in writing. 25
- (3) The commissioning consortium must comply with a requirement imposed under subsection (1).

14Z5 Use of information

Any information, documents, records or other items that are obtained by the Board in pursuance of section 14Z3 or 14Z4 may be used by the Board in connection with any of its functions in relation to commissioning consortia. 30

Intervention powers

14Z6 Power to give directions, dissolve consortium etc.

- (1) This section applies if the Board is satisfied that –
 - (a) a commissioning consortium is failing or has failed to discharge any of its functions, or
 - (b) there is a significant risk that a commissioning consortium will fail to do so. 35
- (2) The Board may direct the consortium to discharge such of those functions, and in such manner and within such period or periods, as may be specified in the direction. 40
- (3) The Board may direct –

- (a) the consortium, or
 - (b) the accountable officer of the consortium,to cease to perform any functions for such period or periods as may be specified in the direction.
- (4) The Board may – 5
 - (a) terminate the appointment of the consortium’s accountable officer, and
 - (b) appoint another person to be its accountable officer.
- (5) Paragraph 9(4) of Schedule 1A does not apply to an appointment under subsection (4)(b). 10
- (6) The Board may vary the constitution of the consortium, including doing so by – 15
 - (a) varying its area,
 - (b) adding any person who is a provider of medical services to the list of members, or
 - (c) removing any person from that list.
- (7) The Board may dissolve the consortium.
- (8) Where a direction is given under subsection (3) the Board may – 20
 - (a) exercise any of the functions that are the subject of the direction on behalf of the consortium or (as the case may be) the accountable officer;
 - (b) direct another consortium or (as the case may be) the accountable officer of another consortium to perform any of those functions on behalf of the consortium or (as the case may be) the accountable officer, in such manner and within such period or periods as may be specified in the directions. 25
- (9) A commissioning consortium to which a direction is given under subsection (3) must – 30
 - (a) where the Board exercises a function of the consortium under subsection (8)(a), co-operate with the Board, and
 - (b) where a direction is given under subsection (8)(b) to another commissioning consortium or to the accountable officer of another commissioning consortium, co-operate with the other consortium or (as the case may be) the accountable officer.
- (10) Before exercising the power conferred by subsection (8)(b) the Board must consult the consortium to which it is proposing to give the direction. 35
- (11) Where the Board exercises a power conferred by subsection (6) or (7), the Board may make a property transfer scheme or a staff transfer scheme. 40
- (12) In subsection (11), “property transfer scheme” and “staff transfer scheme” have the same meaning as in section 14I.
- (13) Part 3 of Schedule 1A applies in relation to a property transfer scheme or a staff transfer scheme under subsection (11) as it applies in relation to a property transfer scheme or (as the case may be) a staff transfer scheme under section 14I(1). 45

- (14) Any reference in subsection (1) to failure to discharge a function includes a reference to failure to discharge it properly.

Procedural requirements in connection with certain powers

14Z7 Procedural requirements in connection with certain powers

- (1) Before exercising the power to dissolve a consortium under section 14Z6(7) the Board must consult the following persons – 5
- (a) the commissioning consortium,
 - (b) relevant local authorities, and
 - (c) any other persons the Board considers it appropriate to consult.
- (2) For that purpose, the Board must provide those persons with a statement – 10
- (a) explaining that it is proposing to exercise the power, and
 - (b) giving its reasons for doing so.
- (3) After consulting those persons (and before exercising the power), the Board must publish a report containing its response to the consultation. 15
- (4) If the Board decides to exercise the power, the report must, in particular, explain its reasons for doing so.
- (5) Regulations may make provision as to the procedure to be followed by the Board before the exercise of the powers conferred by sections 14Z3, 14Z4 and 14Z6. 20
- (6) The Board must publish guidance as to how it proposes to exercise the powers conferred by those sections.
- (7) For the purposes of subsection (1) a local authority is a relevant local authority if the whole or any part of the area of the local authority is in the area of the commissioning consortium. 25

Disclosure of information

14Z8 Permitted disclosures of information

- (1) A commissioning consortium may disclose information obtained by it in the exercise of its functions if –
- (a) the information has previously been lawfully disclosed to the public, 30
 - (b) the disclosure is made under or pursuant to regulations under section 113 or 114 of the Health and Social Care (Community Health and Standards) Act 2003 (complaints about health care or social services), 35
 - (c) the disclosure is made in accordance with any enactment or court order,
 - (d) the disclosure is necessary or expedient for the purposes of protecting the welfare of any individual,
 - (e) the disclosure is made to any person in circumstances where it is necessary or expedient for the person to have the information for the purpose of exercising functions of that person under any enactment, 40

- (f) the disclosure is made for the purpose of facilitating the exercise of any of the consortium’s functions,
 - (g) the disclosure is made in connection with the investigation of a criminal offence (whether or not in the United Kingdom), or
 - (h) the disclosure is made for the purpose of criminal proceedings (whether or not in the United Kingdom). 5
- (2) This section has effect notwithstanding any rule of common law which would otherwise prohibit or restrict the disclosure.

Interpretation

14Z9 Interpretation 10

In this Chapter, “the health service” means the health service in England.”

23 Financial arrangements for consortia

After section 223G of the National Health Service Act 2006 insert –

“Commissioning consortia 15

223H Means of meeting expenditure of commissioning consortia out of public funds

- (1) The Board must pay in respect of each financial year to each commissioning consortium sums not exceeding the amount allotted for that year by the Board to the consortium towards meeting the expenditure of the consortium which is attributable to the performance by it of its functions in that year. 20
- (2) In determining the amount to be allotted to a consortium for any year, the Board may take into account –
 - (a) the expenditure of the consortium during any previous financial year, and
 - (b) the amount that it proposes to hold, during the year to which the allotment relates, in any contingency fund established under section 223G. 25
- (3) An amount is allotted to a consortium for a year under this section when the consortium is notified in writing by the Board that the amount is allotted to it for that year. 30
- (4) The Board may make a new allotment under this section increasing or reducing an allotment previously so made.
- (5) Where the Board allots an amount to a consortium or makes a new allotment under subsection (4), it must notify the Secretary of State. 35
- (6) The Board may give directions to a commissioning consortium with respect to –
 - (a) the application of sums paid to it by virtue of a new allotment increasing an allotment previously so made, and
 - (b) the payment of sums by it to the Board in respect of charges or other sums referable to the valuation or disposal of assets. 40

- (7) Sums falling to be paid to commissioning consortia under this section are payable subject to such conditions as to records, certificates or otherwise as the Board may determine.
- (8) In this section and sections 223I to 223L “financial year” includes the period which begins on the day the consortium is established and ends on the following 31 March. 5
- 223I Financial duties of commissioning consortia: general**
- (1) Each commissioning consortium must, in respect of each financial year, perform its functions so as to ensure that its expenditure which is attributable to the performance by it of its functions in that year does not exceed the aggregate of – 10
- (a) the amount allotted to it for that year under section 223H,
 - (b) any sums received by it in that year under any provision of this Act (other than sums received by it under section 223H), and
 - (c) any sums received by it in that year otherwise than under this Act for the purpose of enabling it to defray such expenditure. 15
- (2) The Board may by directions determine –
- (a) whether specified sums must, or must not, be treated for the purposes of this section as received by a specified consortium,
 - (b) whether specified expenditure must, or must not, be treated for those purposes as expenditure within subsection (1) of a specified consortium, or 20
 - (c) the extent to which, and the circumstances in which, sums received by a consortium under section 223H but not yet spent must be treated for the purposes of this section as part of the expenditure of the consortium, and to which financial year’s expenditure they must be attributed. 25
- (3) The Secretary of State may by directions require a commissioning consortium to use specified banking facilities for any specified purposes. 30
- (4) In this section, “specified” means specified in the directions.
- 223J Financial duties of commissioning consortia: use of resources**
- (1) A commissioning consortium must ensure that the use of its resources in a financial year does not exceed the amount specified for it in relation to that year by the Board. 35
- (2) The Board may vary the amount specified by it under this section.
- (3) For the purposes of subsection (1) the Board may give directions –
- (a) specifying uses of resources which must, or must not, be taken into account;
 - (b) making provision for determining to which consortium certain uses of resources must be attributed; 40
 - (c) specifying descriptions of resources which must, or must not, be taken into account.
- (4) In this section, a reference to the use of resources is a reference to their expenditure, consumption or reduction in value. 45

223K Financial duties of commissioning consortia: restriction on certain types of expenditure

- (1) A commissioning consortium must ensure that its capital expenditure in respect of a financial year does not exceed such sum as the Board may specify in relation to that year. 5
- (2) A commissioning consortium must ensure that its revenue expenditure in respect of a financial year does not exceed such sum as the Board may specify in relation to that year.
- (3) A commissioning consortium must ensure that its expenditure in respect of a financial year on prescribed matters relating to administration does not (in total) exceed such sum as the Board may specify in relation to that year. 10
- (4) The Board may vary any sum specified for the purposes of this section.
- (5) The Board may by directions determine whether expenditure by a consortium of a description specified in the directions must, or must not, be treated for the purposes of this section as expenditure within subsection (1) or (2). 15
- (6) For the purposes of this section, expenditure is to be disregarded if it is met otherwise than from sums paid to the consortium under section 223H. 20

223L Payments in respect of performance

- (1) The Board may, after the end of a financial year, make a payment to a commissioning consortium if, in the light of an assessment carried out under section 14Z1, it considers that the consortium has performed well during that year. 25
- (2) The Board may make one or more payments (“advance payments”) to a commissioning consortium before the end of a financial year if it considers that the consortium is likely to perform well during that year.
- (3) The amount of a payment under subsection (1) is to be –
 - (a) the amount that the Board considers to be appropriate in the light of the consortium’s performance during the financial year, less
 - (b) the amount of any advance payments made to the consortium during that year. 30
- (4) Subsection (5) applies if –
 - (a) any advance payments are made to a commissioning consortium during a financial year, but
 - (b) no payment is made to the consortium under subsection (1) in respect of that year (whether because the Board decided not to make such a payment or because the amount of any advance payments was equal to or exceeded the amount determined by the Board under subsection (3)(a)). 40
- (5) The Board may –
 - (a) make a deduction from a payment that the Board decides to make under subsection (1) in respect of a subsequent financial year, or 45

- (b) make deductions from more than one such payment.
- (6) The maximum amount that may (in total) be deducted under subsection (5) is –
 - (a) in a case where the Board decided not to make a payment to the consortium under subsection (1), the amount of any advance payments, and 5
 - (b) in any other case, the difference between the amount of any advance payments and the amount determined by the Board under subsection (3)(a).
- (7) A commissioning consortium may distribute any payments received by it under this section among its members in such proportions as it considers appropriate.” 10

24 Requirement for primary medical services provider to belong to consortium

- (1) In section 89 of the National Health Service Act 2006 (general medical services contracts: required terms), after subsection (1) insert – 15
 - “(1A) Regulations under subsection (1) may in particular make provision –
 - (a) for requiring a contractor who provides services of a prescribed description (a “relevant contractor”) to be a member of a commissioning consortium;
 - (b) as to arrangements for securing that a relevant contractor appoints one individual to act on its behalf in the dealings between it and the consortium to which it belongs; 20
 - (c) for imposing requirements with respect to those dealings on the individual appointed for the purposes of paragraph (b);
 - (d) for requiring a relevant contractor, in doing anything pursuant to the contract, to act with a view to enabling the consortium to which it belongs to discharge its functions (including its obligation to act in accordance with its constitution). 25
 - (1B) Provision by virtue of subsection (1A)(a) may in particular describe services by reference to the manner or circumstances in which they are performed. 30
 - (1C) In the case of a contract entered into by two or more individuals practising in partnership –
 - (a) regulations making provision under subsection (1A)(a) may make provision for requiring each partner to secure that the partnership is a member of the consortium; 35
 - (b) regulations making provision under subsection (1A)(b) may make provision as to arrangements for securing that the partners make the appointment;
 - (c) regulations making provision under subsection (1A)(d) may make provision for requiring each partner to act as mentioned there. 40
 - (1D) Regulations making provision under subsection (1A) for the case of a contract entered into by two or more individuals practising in partnership may make provision as to the effect of a change in the membership of the partnership. 45

- (1E) The regulations may require an individual appointed for the purposes of subsection (1A)(b)–
- (a) to be a member of a profession regulated by a body mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002, and 5
 - (b) to meet such other conditions as may be prescribed.”
- (2) In section 94 of that Act (regulations about arrangements under section 92 of that Act for provision of primary medical services), after subsection (3) insert –
- “(3A) Regulations under subsection (3)(d) may –
- (a) require a person who provides services of a prescribed description in accordance with section 92 arrangements (a “relevant provider”) to be a member of a commissioning consortium; 10
 - (b) make provision as to arrangements for securing that a relevant provider appoints one individual to act on its behalf in dealings between it and the consortium to which it belongs; 15
 - (c) impose requirements with respect to those dealings on the individual appointed for the purposes of paragraph (b);
 - (d) require a relevant provider, in doing anything pursuant to section 92 arrangements, to act with a view to enabling the consortium to which it belongs to discharge its functions (including its obligation to act in accordance with its constitution). 20
- (3B) Provision by virtue of subsection (3A)(a) may in particular describe services by reference to the manner or circumstances in which they are performed. 25
- (3C) In the case of an agreement made with two or more persons –
- (a) regulations making provision under subsection (3A)(a) may require each person to secure that the persons collectively are a member of the consortium; 30
 - (b) regulations making provision under subsection (3A)(b) may make provision as to arrangements for securing that the persons collectively make the appointment;
 - (c) regulations making provision under subsection (3A)(d) may require each person to act as mentioned there. 35
- (3D) Regulations making provision under subsection (3A) for the case of an agreement made with two or more persons may make provision as to the effect of a change in the composition of the group of persons involved.
- (3E) The regulations may require an individual appointed for the purposes of subsection (3A)(b)–
- (a) to be a member of a profession regulated by a body mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002, and 40
 - (b) to meet such other conditions as may be prescribed.” 45

*Further provision about local authorities' role in the health service***25 Other health service functions of local authorities under the 2006 Act**

- (1) The National Health Service Act 2006 (c. 41) is amended as follows.
- (2) In section 111 (dental public health) –
- (a) in subsection (1) for “A Primary Care Trust” substitute “A local authority”, 5
 - (b) in subsection (2) –
 - (i) for “Primary Care Trust” (in each place where it occurs) substitute “local authority”, and
 - (ii) in paragraph (b) for “other Primary Care Trusts” substitute “other local authorities”, and 10
 - (c) after subsection (2) insert –
 - “(3) In this section, “local authority” has the same meaning as in section 2B.”
- (3) In section 249 (joint working with the prison service) after subsection (4) insert – 15
- “(4A) For the purposes of this section, each local authority (within the meaning of section 2B) is to be treated as an NHS body.”

26 Appointment of directors of public health

In Part 3 of the National Health Service Act 2006 (local authorities and the NHS) before section 74 insert – 20

“73A Appointment of directors of public health

- (1) Each local authority must, acting jointly with the Secretary of State, appoint an individual to have responsibility for –
- (a) the exercise by the authority of its functions under section 2B, 111 or 249 or Schedule 1, 25
 - (b) the exercise by the authority of its functions by virtue of section 6C,
 - (c) anything done by the authority in pursuance of arrangements under section 7A, 30
 - (d) the exercise by the authority of any of its functions that relate to planning for, or responding to, emergencies involving a risk to public health,
 - (e) the functions of the authority under section 325 of the Criminal Justice Act 2003, and 35
 - (f) such other functions relating to public health as may be prescribed.
- (2) The individual so appointed is to be an officer of the local authority and is to be known as its director of public health.
- (3) Subsection (4) applies if the Secretary of State – 40
- (a) considers that the director has failed or might have failed to discharge (or to discharge properly) the responsibilities of the director under –

- (i) subsection (1)(b), or
 - (ii) subsection (1)(c) where the arrangements relate to the Secretary of State’s functions under section 2A, and
 - (b) has consulted the local authority.
 - (4) The Secretary of State may direct the local authority to – 5
 - (a) review how the director has discharged the responsibilities mentioned in subsection (3)(a);
 - (b) investigate whether the director has failed to discharge (or to discharge properly) those responsibilities;
 - (c) consider taking any steps specified in the direction; 10
 - (d) report to the Secretary of State on the action it has taken in pursuance of a direction given under any of the preceding paragraphs.
 - (5) A local authority may terminate the appointment of its director of public health. 15
 - (6) Before terminating the appointment of its director of public health, a local authority must consult the Secretary of State.
 - (7) In this section, “local authority” has the same meaning as in section 2B.”
- 27 Exercise of public health functions of local authorities**
- In Part 3 of the National Health Service Act 2006 after section 73A insert – 20
- “73B Exercise of public health functions of local authorities: further provision**
- (1) A local authority must, in the exercise of any functions mentioned in subsection (2), have regard to any document published by the Secretary of State for the purposes of this section. 25
 - (2) The functions mentioned in this subsection are –
 - (a) the exercise by the authority of its functions under section 2B, 111 or 249 or Schedule 1,
 - (b) the exercise by the authority of its functions by virtue of section 6C, 30
 - (c) anything done by the authority in pursuance of arrangements under section 7A,
 - (d) the functions of the authority under section 325 of the Criminal Justice Act 2003, and
 - (e) such other functions relating to public health as may be prescribed. 35
 - (3) The Secretary of State may give guidance to local authorities as to the exercise of any functions mentioned in subsection (2).
 - (4) The director of public health for a local authority must prepare an annual report on the health of the people in the area of the local authority. 40
 - (5) The local authority must publish the report.
 - (6) In this section, “local authority” has the same meaning as in section 2B.”

*Abolition of Strategic Health Authorities and Primary Care Trusts***28 Abolition of Strategic Health Authorities**

- (1) The Strategic Health Authorities continued in existence or established under section 13 of the National Health Service Act 2006 are abolished.
- (2) Chapter 1 of Part 2 of that Act (Strategic Health Authorities) is repealed. 5

29 Abolition of Primary Care Trusts

- (1) The Primary Care Trusts continued in existence or established under section 18 of the National Health Service Act 2006 are abolished.
- (2) Chapter 2 of Part 2 of that Act (Primary Care Trusts) is repealed.

Functions relating to mental health matters 10**30 Approval functions**

- (1) After section 12 of the Mental Health Act 1983 insert –
“12ZA Agreement for exercise of approval function: England
 - (1) The Secretary of State may enter into an agreement with another person for an approval function of the Secretary of State to be exercisable by the Secretary of State concurrently –
 - (a) with that other person, and
 - (b) if a requirement under section 12ZB has effect, with the other person by whom the function is exercisable under that requirement. 15
 - (2) In this section and sections 12ZB and 12ZC, “approval function” means –
 - (a) the function under section 12(2), or
 - (b) the function of approving persons as approved clinicians. 20
 - (3) An agreement under this section may, in particular, provide for an approval function to be exercisable by the other party –
 - (a) in all circumstances or only in specified circumstances;
 - (b) in all areas or only in specified areas. 25
 - (4) An agreement under this section may provide for an approval function to be exercisable by the other party –
 - (a) for a period specified in the agreement, or
 - (b) for a period determined in accordance with the agreement. 30
 - (5) The other party to an agreement under this section must comply with such instructions as the Secretary of State may give with respect to the exercise of the approval function. 35
 - (6) An instruction under subsection (5) may require the other party to cease to exercise the function to such extent as the instruction specifies.

- (7) The agreement may provide for the Secretary of State to pay compensation to the other party in the event of an instruction such as is mentioned in subsection (6) being given.
- (8) An instruction under subsection (5) may be given in such form as the Secretary of State may determine. 5
- (9) The Secretary of State must publish instructions under subsection (5) in such form as the Secretary of State may determine; but that does not apply to an instruction such as is mentioned in subsection (6).
- (10) An agreement under this section may provide for the Secretary of State to make payments to the other party; and the Secretary of State may make payments to other persons in connection with the exercise of an approval function by virtue of this section. 10

12ZB Requirement to exercise approval functions: England

- (1) The Secretary of State may impose a requirement on the National Health Service Commissioning Board (“the Board”) or a Special Health Authority for an approval function of the Secretary of State to be exercisable by the Secretary of State concurrently – 15
 - (a) with the Board or (as the case may be) Special Health Authority, and
 - (b) if an agreement under section 12ZA has effect, with the other person by whom the function is exercisable under that agreement. 20
- (2) The Secretary of State may, in particular, require the body concerned to exercise an approval function – 25
 - (a) in all circumstances or only in specified circumstances;
 - (b) in all areas or only in specified areas.
- (3) The Secretary of State may require the body concerned to exercise an approval function – 30
 - (a) for a period specified in the requirement, or
 - (b) for a period determined in accordance with the requirement.
- (4) Where a requirement under subsection (1) is imposed, the Board or (as the case may be) Special Health Authority must comply with such instructions as the Secretary of State may give with respect to the exercise of the approval function.
- (5) An instruction under subsection (4) may be given in such form as the Secretary of State may determine. 35
- (6) The Secretary of State must publish instructions under subsection (4) in such form as the Secretary of State may determine.
- (7) Where the Board or a Special Health Authority has an approval function by virtue of this section, the function is to be treated for the purposes of the National Health Service Act 2006 as a function that it has under that Act. 40
- (8) The Secretary of State may make payments in connection with the exercise of an approval function by virtue of this section.

12ZC Provision of information for the purposes of section 12ZA or 12ZB

- (1) A relevant person may provide another person with such information as the relevant person considers necessary or appropriate for or in connection with—
- (a) the exercise of an approval function; or 5
 - (b) the exercise by the Secretary of State of the power—
 - (i) to enter into an agreement under section 12ZA;
 - (ii) to impose a requirement under section 12ZB; or
 - (iii) to give an instruction under section 12ZA(5) or 12ZB(4).
- (2) The relevant persons are— 10
- (a) the Secretary of State;
 - (b) a person who is a party to an agreement under section 12ZA; or
 - (c) if the Secretary of State imposes a requirement under section 12ZB on the National Health Service Commissioning Board or a Special Health Authority, the Board or (as the case may be) Special Health Authority. 15
- (3) This section, in so far as it authorises the provision of information by one relevant person to another relevant person, has effect notwithstanding any rule of common law which would otherwise prohibit or restrict the provision. 20
- (4) In this section, “information” includes documents and records.”
- (2) In section 54(1) of that Act (requirement for certain medical evidence etc. to be from practitioner approved under section 12 of the Act), after “the Secretary of State” insert “, or by another person by virtue of section 12ZA or 12ZB above,”.
- (3) In section 139(4) of that Act (protection for acts done in pursuance of the Act: exceptions), at the end insert “or against a person who has functions under this Act by virtue of section 12ZA in so far as the proceedings relate to the exercise of those functions”. 25
- (4) In section 145(1) of that Act (interpretation), in the definition of “approved clinician”, after “the Secretary of State” insert “or another person by virtue of section 12ZA or 12ZB above”. 30
- (5) In each of the following provisions, after “the Secretary of State” insert “, or by another person by virtue of section 12ZA or 12ZB of that Act,”—
- (a) in section 8(2) of the Criminal Procedure (Insanity) Act 1964 (interpretation), in the definition of “duly approved”, 35
 - (b) in section 51(1) of the Criminal Appeal Act 1968 (interpretation), in the definition of “duly approved”,
 - (c) in section 6(1) of the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 (interpretation), in the definition of “duly approved”,
 - (d) in section 157(6) of the Criminal Justice Act 2003 (mentally disordered offenders: definition of “medical report”), 40
 - (e) in section 172(1) of the Armed Forces Act 2006 (fitness to stand trial etc: definition of “duly approved”), and
 - (f) in section 258(5) of that Act (mentally disordered offenders), in the definition of “medical report”. 45

31 Discharge of patients

- (1) In section 23 of the Mental Health Act 1983 (discharge of patients), omit subsections (3) and (3A).
- (2) In section 24 of that Act (visiting and examination of patients), omit subsections (3) and (4). 5
- (3) In Schedule 1 to that Act (application of certain provisions of that Act to patients subject to hospital and guardianship orders) –
 - (a) in Part 1, in paragraph 1, omit “24(3) and (4),” and
 - (b) in Part 2, in paragraph 1, omit “24(3) and (4),”.
- (4) In consequence of the repeals made by this section – 10
 - (a) in the National Health Service and Community Care Act 1990, in Schedule 9 –
 - (i) omit paragraph 24(3)(a) and the “and” following it, and
 - (ii) omit paragraph 24(4),
 - (b) in the Health Authorities Act 1995, in Schedule 1, omit paragraph 107(2)(a) and (3), 15
 - (c) in the Care Standards Act 2000, in Schedule 4, omit paragraph 9(3),
 - (d) in the Health and Social Care (Community Health and Standards) Act 2003, in Schedule 4, omit paragraphs 53(a) and 54,
 - (e) in the Domestic Violence, Crime and Victims Act 2004 – 20
 - (i) omit sections 37A(5), 38A(3), 43A(5) and 44A(3),
 - (ii) in section 37A(7)(a), omit “, (5)”, and
 - (iii) in section 43A(7), omit “, (5)”, and
 - (f) in the Mental Health Act 2007, in Schedule 3, omit paragraphs 10(5) and (6) and 11(3) and (4). 25

32 After-care

- (1) Section 117 of the Mental Health Act 1983 (after-care) is amended as follows.
- (2) In subsection (2) –
 - (a) after “duty of the” insert “commissioning consortium or”,
 - (b) omit “Primary Care Trust or” in each place it appears, 30
 - (c) for “and of the local social services authority” substitute “, and it shall be the duty of the local social services authority,”,
 - (d) for “such time as the” substitute “such time as (in relation to England) the commissioning consortium or”,
 - (e) before “Local Health Board and the” insert “local social services authority is satisfied that the person concerned is no longer in need of such services or (in relation to Wales) the”, 35
 - (f) for “are satisfied that the person concerned is no longer in need of such services” substitute “are so satisfied”, and
 - (g) for “they” substitute “it (in relation to England) or they (in relation to Wales)”. 40
- (3) In subsection (2C) –
 - (a) in paragraph (a), omit “or section 12A(4) of the National Health Service Act 2006”, and

- (b) after paragraph (b) insert “; but see also subsection (2F)(b).”
- (4) After subsection (2C) insert –
- “(2D) Subsection (2) above, in its application to the commissioning consortium, has effect as if – 5
- (a) for “to provide” there were substituted “to arrange for the provision of”; and
- (b) the words “, in co-operation with relevant voluntary agencies,” were omitted.
- (2E) The duty imposed on the commissioning consortium by subsection (2) above applies only to services for the provision of which the consortium has – 10
- (a) a duty to arrange under section 3 of the National Health Service Act 2006; or
- (b) a power to arrange under section 3A of that Act. 15
- (2F) The duty imposed on the commissioning consortium by subsection (2) above is to be regarded for all purposes as a duty imposed on it by section 3 of that Act; and accordingly –
- (a) references in any provision made by or under any Act to the provision of services under that section or that Act are to be read as including a reference to the provision of services under this section; and 20
- (b) references in any provision made by or under this or any other Act to the provision of services under this section are to be read in the light of this subsection. 25
- (2G) The Secretary of State may by regulations provide that the duty imposed on the commissioning consortium by subsection (2) above is, in the circumstances or to the extent prescribed by the regulations, to be imposed instead on another commissioning consortium or the National Health Service Commissioning Board. 30
- (2H) Where regulations under subsection (2G) above provide that the duty imposed by subsection (2) above is to be imposed on the National Health Service Commissioning Board, subsections (2D) to (2F) above have effect as if –
- (a) references to the commissioning consortium were references to the National Health Service Commissioning Board; and 35
- (b) subsection (2E) above were omitted.
- (2I) Section 272(7) and (8) of the National Health Service Act 2006 applies to the power to make regulations under subsection (2G) above as it applies to a power to make regulations under that Act.” 40
- (5) In subsection (3) –
- (a) after “section “the” insert “commissioning consortium or”,
- (b) omit “Primary Care Trust or” in each place it appears, and
- (c) after “means the”, in the first place it appears, insert “commissioning consortium or”. 45

- (6) In consequence of the repeals made by subsections (2)(b) and (5)(b), omit paragraph 47 of Schedule 2 to the National Health Service Reform and Health Care Professions Act 2002.

33 Provision of pocket money for in-patients

- (1) Section 122 of the Mental Health Act 1983 (provision of pocket money for in-patients) is amended as follows. 5
- (2) In subsection (1) –
- (a) for “Secretary of State may” substitute “Welsh Ministers may (in relation to Wales)”,
 - (b) for “he thinks fit” substitute “the Welsh Ministers think fit”, 10
 - (c) for “their” substitute “those persons”,
 - (d) for “him” substitute “the Welsh Ministers”, and
 - (e) for “they” substitute “those persons”.
- (3) In subsection (2) –
- (a) omit “the National Health Service Act 2006 and”, and 15
 - (b) for “either of those Acts” substitute “that Act”.
- (4) In section 146 of that Act (application to Scotland), omit “122,”.

34 Transfers to and from special hospitals

- (1) Omit section 123 of the Mental Health Act 1983 (transfers to and from special hospitals). 20
- (2) In section 68A of that Act (power to reduce periods after which cases must be referred to tribunal), in subsection (4) –
- (a) after paragraph (c), insert “or”,
 - (b) omit the “or” following paragraph (d), and
 - (c) omit paragraph (e). 25
- (3) In section 138 of that Act (retaking of patients escaping from custody), in subsection (4)(a), omit “or under section 123 above”.
- (4) In consequence of the repeal made by subsection (1), omit paragraph 67 of Schedule 4 to the Health Act 1999.
- (5) This section does not affect – 30
- (a) the authority for the detention of a person who is liable to be detained under the Mental Health Act 1983 before the commencement of this section,
 - (b) that Act in relation to any application, order or direction for admission or removal to a hospital made under that Act before that commencement, or 35
 - (c) the authority for the retaking of a person who, before that commencement, escapes while being taken to or from a hospital as mentioned in section 138(4)(a) of that Act.

35 Independent mental health advocates

- (1) In section 130A of the Mental Health Act 1983 (independent mental health advocates: England), in subsection (1) – 40

- (a) for “The Secretary of State” substitute “A local social services authority whose area is in England”, and
- (b) at the end insert “for whom the authority is responsible for the purposes of this section”.
- (2) In subsection (4) of that section, for “the Secretary of State” substitute “a local social services authority”. 5
- (3) In section 130C of that Act (provision supplementary to section 130A), after subsection (4) insert –
- “(4A) A local social services authority is responsible for a qualifying patient if – 10
- (a) in the case of a qualifying patient falling within subsection (2)(a) above, the hospital or registered establishment in which he is liable to be detained is situated in that authority’s area;
- (b) in the case of a qualifying patient falling within subsection (2)(b) above, that authority is the responsible local social services authority within the meaning of section 34(3) above; 15
- (c) in the case of a qualifying patient falling within subsection (2)(c), the responsible hospital is situated in that authority’s area;
- (d) in the case of a qualifying patient falling within subsection (3) – 20
- (i) in a case where the patient has capacity or is competent to do so, he nominates that authority as responsible for him for the purposes of section 130A above, or
- (ii) in any other case, a donee or deputy or the Court of Protection, or a person engaged in caring for the patient or interested in his welfare, nominates that authority on his behalf as responsible for him for the purposes of that section. 25
- (4B) In subsection (4A)(d) above –
- (a) the reference to a patient who has capacity is to be read in accordance with the Mental Capacity Act 2005; 30
- (b) the reference to a donee is to a donee of a lasting power of attorney (within the meaning of section 9 of that Act) created by the patient, where the donee is acting within the scope of his authority and in accordance with that Act; 35
- (c) the reference to a deputy is to a deputy appointed for the patient by the Court of Protection under section 16 of that Act, where the deputy is acting within the scope of his authority and in accordance with that Act.”
- (4) In Schedule 1 to the Local Authority Social Services Act 1970 (social services functions), in the entry for the Mental Health Act 1983, at the appropriate place insert – 40
- “Section 130A
- Making arrangements to enable independent mental health advocates to be available to help qualifying patients”. 45

36 Patients' correspondence

- (1) In section 134 of the Mental Health Act 1983 (patients' correspondence), in subsection (1) –
 - (a) before “the approved clinician” insert “or”, and
 - (b) omit “or the Secretary of State”. 5
- (2) Subsection (1) of this section does not affect the validity of any requests made to the Secretary of State under section 134(1) of that Act and having effect immediately before the commencement of this section.

37 Notification of hospitals having arrangements for special cases

- (1) In section 140 of the Mental Health Act 1983 (notification of hospitals having arrangements for special cases) –
 - (a) after “the duty of” insert “every commissioning consortium and of”,
 - (b) omit “every Primary Care Trust and of”,
 - (c) after “the area of the” insert “commissioning consortium or”,
 - (d) omit “Primary Care Trust or” in the first place it appears, 15
 - (e) after “available to the” insert “commissioning consortium or”, and
 - (f) omit “Primary Care Trust or” in the second place it appears.
- (2) In consequence of the repeals made by this section, in the National Health Service Reform and Health Care Professions Act 2002, in Schedule 2, omit paragraph 48(a) and (c). 20

Emergency powers

38 Role of the Board and consortia in respect of emergencies

For the cross-heading preceding section 253 of the National Health Service Act 2006 substitute “Emergencies: role of the Secretary of State, the Board and consortia” and after the cross-heading insert – 25

“252A Role of the Board and consortia in respect of emergencies

- (1) The Board and each commissioning consortium must take appropriate steps for securing that it is properly prepared for dealing with a relevant emergency.
- (2) The Board must take such steps as it considers appropriate for securing that each commissioning consortium is properly prepared for dealing with a relevant emergency. 30
- (3) The steps taken by the Board under subsection (2) must include monitoring compliance by each commissioning consortium with its duty under subsection (1). 35
- (4) The Board must take such steps as it considers appropriate for securing that each relevant service provider is properly prepared for dealing with a relevant emergency.
- (5) The steps taken by the Board under subsection (4) must include monitoring compliance by the service provider with any requirements imposed on it by its service arrangements for the purpose of securing that it is properly prepared for dealing with a relevant emergency. 40

- (6) The Board may take such steps as it considers appropriate for facilitating a co-ordinated response to an emergency by the commissioning consortia and relevant service providers for which it is a relevant emergency.
- (7) The Board may arrange for any body or person to exercise any functions of the Board under subsections (2) to (6). 5
- (8) A relevant service provider must appoint an individual to be responsible for –
- (a) securing that the provider is properly prepared for dealing with a relevant emergency, 10
 - (b) securing that the provider complies with any requirements mentioned in subsection (5), and
 - (c) providing the Board with such information as it may require for the purpose of discharging its functions under this section.
- (9) In this section – 15
- “relevant emergency”, in relation to the Board or a commissioning consortium, means any emergency which might affect the Board or the consortium (whether by increasing the need for the services that it may arrange or in any other way);
 - “relevant emergency”, in relation to a relevant service provider, means any emergency which might affect the provider (whether by increasing the need for the services that it may provide or in any other way); 20
 - “relevant service provider” means any body or person providing services in pursuance of service arrangements; 25
 - “service arrangements”, in relation to a relevant service provider, means arrangements made by the Board or a commissioning consortium under section 3, 3A, 3B or 4 or Schedule 1.”
- 39 Secretary of State’s emergency powers**
- (1) Section 253 of the National Health Service Act 2006 (emergency powers) is amended as follows. 30
- (2) In subsection (1) for the words from “it is necessary” to the end of the subsection substitute “it is appropriate to do so”.
- (3) After subsection (1) insert –
- “(1A) A direction under this section may be given to – 35
- (a) an NHS body other than a Local Health Board;
 - (b) the National Institute for Health and Care Excellence;
 - (c) the Health and Social Care Information Centre;
 - (d) any body or person providing services in pursuance of arrangements made in the exercise of the functions of the Board or commissioning consortia under section 3, 3A, 3B or 4 or Schedule 1, other than an NHS body.” 40
- (4) For subsection (2) substitute –
- “(2) In relation to an NHS body, the powers conferred by this section may be exercised – 45

- (a) to give directions to the body about the exercise of any of its functions;
 - (b) to direct the body to cease to exercise any of its functions for a specified period;
 - (c) to direct the body to exercise any of its functions concurrently with another body or person for a specified period; 5
 - (d) to direct the body to exercise any function conferred on another body or person under or by virtue of this Act for a specified period (whether to the exclusion of, or concurrently with, that body or person). 10
- (2A) In relation to a body or person within subsection (1A)(b), the powers conferred by this section may be exercised –
 - (a) to give directions to the body or person about the provision of any services that it provides in pursuance of arrangements mentioned in subsection (1A)(b); 15
 - (b) to direct the body or person to cease to provide any of those services for a specified period;
 - (c) to direct the body or person to provide other services for the purposes of the health service for a specified period.”
- (5) After subsection (2A) insert – 20
 - “(2B) The Secretary of State may direct the Board to exercise the functions of the Secretary of State under this section.
 - (2C) The Secretary of State may give directions to the Board about its exercise of any functions that are the subject of a direction under subsection (2B). 25
 - (2D) In this section, “specified” means specified in the direction.”
- (6) Omit subsection (4) (exclusion of NHS foundation trusts from application of emergency powers).
- (7) In section 273 of that Act (further provision about orders and directions under the Act), in subsection (4)(c)(ii), for “or 120” substitute “, 120 or 253”. 30

Miscellaneous

40 New Special Health Authorities

- (1) After section 28 of the National Health Service Act 2006 (special health authorities) insert –
 - “28A Special Health Authorities: further provision 35**
 - (1) This section applies in relation to an order under section 28 which is made after the coming into force of section 40 of the Health and Social Care Act 2011.
 - (2) The order must include –
 - (a) provision for the abolition of the Special Health Authority on a day specified in the order, and 40
 - (b) provision as to the transfer of officers, property and liabilities of the Authority on its abolition.

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- (3) The day specified in accordance with subsection (2)(a) must be within the period of 3 years beginning with the day on which the Special Health Authority is established.
- (4) The power (by virtue of section 273(1)) to vary an order under section 28 includes power to vary the provision mentioned in subsection (2) by –
- (a) providing for the abolition of the Special Health Authority on a day which is earlier or later than the day for the time being specified in the order;
 - (b) making different provision as to the matters mentioned in subsection (2)(b).
- (5) If an order is varied to provide for the abolition of the Special Health Authority on a later day, that day must be within the period of 3 years beginning with the day on which the Special Health Authority would (but for the variation) have been abolished.
- (2) In section 272 of that Act (orders, regulations, rules and directions), in subsection (6), after paragraph (zb) insert –
- “(zc) an order under section 28 which varies such an order as mentioned in section 28A(5),”.
- 41 Primary care services: directions as to exercise of functions**
- (1) After section 98 of the National Health Service Act 2006 insert –
- “Directions*
- 98A Exercise of functions**
- (1) The Secretary of State may direct the Board to exercise any of the Secretary of State’s functions relating to the provision of primary medical services.
 - (2) The Secretary of State may give directions to the Board about its exercise of any functions relating to the provision of primary medical services (including functions which the Board has been directed to exercise under subsection (1)).
 - (3) The Board may direct a commissioning consortium to exercise any of the Board’s functions relating to the provision of primary medical services.
 - (4) The Board may give directions to a commissioning consortium about the exercise by it of any functions relating to the provision of primary medical services (including functions which the consortium has been directed to exercise under subsection (3)).
 - (5) Subsection (3) does not apply to such functions, or functions of such descriptions, as may be prescribed.
 - (6) Where the Board gives a direction under subsection (3) or (4), it may disclose to the consortium information it has about the provision of the primary medical services in question, if the Board considers it necessary or appropriate to do so in order to enable or assist the consortium to exercise the function specified in the direction.

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- (7) A commissioning consortium exercising a function specified in a direction under subsection (3) or (4) must report to the Board on matters arising out of the consortium’s exercise of the function.
- (8) A report under subsection (7) must be made in such form and manner as the Board may specify. 5
- (9) The Board may, in exercising its functions relating to the provision of the primary medical services in question, have regard to a report under subsection (7).”
- (2) After section 114 of that Act insert –
- “Directions* 10
- 114A Exercise of functions**
- (1) The Secretary of State may direct the Board to exercise any of the Secretary of State’s functions relating to the provision of primary dental services.
- (2) The Secretary of State may give directions to the Board about its exercise of any functions relating to the provision of primary dental services (including functions which the Board has been directed to exercise under subsection (1)).” 15
- (3) After section 125 of that Act insert –
- “Directions* 20
- 125A Exercise of functions**
- (1) The Secretary of State may direct the Board to exercise any of the Secretary of State’s functions relating to the provision of primary ophthalmic services.
- (2) The Secretary of State may give directions to the Board about its exercise of any functions relating to the provision of primary ophthalmic services (including functions which the Board has been directed to exercise under subsection (1)). 25
- (3) The Board may direct a commissioning consortium, a Special Health Authority or such other body as may be prescribed to exercise any of the Board’s functions relating to the provision of primary ophthalmic services. 30
- (4) The Board may give directions to a commissioning consortium, a Special Health Authority or such other body as may be prescribed about the exercise by the body of any functions relating to the provision of primary ophthalmic services (including functions which it has been directed to exercise under subsection (3)). 35
- (5) Subsection (3) does not apply to such functions, or functions of such descriptions, as may be prescribed.
- (6) Where the Board gives a direction to a body under subsection (3) or (4), it may disclose to the body the information it has about the provision of the primary ophthalmic services in question, if the Board considers it 40

necessary or appropriate to do so in order to enable or assist the body to exercise the function specified in the direction.

- (7) A body which is given a direction under subsection (3) or (4) must report to the Board on matters arising out of the exercise of the function to which the direction relates. 5
- (8) A report under subsection (7) must be made in such form and manner as the Board may specify.
- (9) The Board may, in exercising its functions relating to the provision of the primary ophthalmic services in question, have regard to a report under subsection (7).” 10
- (4) After section 168 of that Act insert –

“Directions

168A Exercise of functions

- (1) The Secretary of State may direct the Board to exercise any of the Secretary of State’s functions relating to services that may be provided as pharmaceutical services, or as local pharmaceutical services, under this Part. 15
- (2) The Secretary of State may give directions to the Board about its exercise of any functions relating to pharmaceutical services or to local pharmaceutical services (including functions which the Board has been directed to exercise under subsection (1)).” 20

42 Charges in respect of certain public health functions

- (1) After section 186 of the National Health Service Act 2006 insert –

“186A Charges in respect of public health functions

- (1) *The Secretary of State may make charges under this subsection in respect of any step taken under section 2A.* 25
- (2) The power conferred by subsection (1) does not apply in respect of the provision of a service or facility to an individual, or the taking of any other step in relation to an individual, for the purpose of protecting the individual’s health. 30
- (3) *Charges under subsection (1) may be calculated on such basis as the Secretary of State considers appropriate.*
- (4) Regulations may provide for the making and recovery of charges in respect of –
- (a) the taking of prescribed steps by a local authority under section 2A (by virtue of regulations under section 6C(1)), and 35
- (b) the taking of prescribed steps by a local authority under section 2B.
- (5) Regulations under subsection (4) may make provision as to the calculation of charges authorised by the regulations, including provision prescribing the amount or the maximum amount that may be charged. 40

- (6) Nothing in this section affects any other power conferred by or under this Act to make charges.”
- (2) In section 272 of that Act (orders, regulations, rules and directions), in subsection (6) after paragraph (zc) insert –
“(zd) regulations under section 186A(4),”.
- 43 Pharmaceutical services expenditure**
- (1) After section 165 of the National Health Service Act 2006 insert –
“165A Pharmaceutical remuneration: further provision
- (1) The Board must provide the Secretary of State with such information relating to the remuneration paid by the Board to persons providing pharmaceutical services or local pharmaceutical services as the Secretary of State may require. 10
- (2) The information must be provided in such form, and at such time or within such period, as the Secretary of State may require.
- (3) Schedule 12A makes further provision about pharmaceutical remuneration.” 15
- (2) After Schedule 12 to that Act insert the Schedule set out in Schedule 3 to this Act.
- 44 Secretary of State’s annual report**
- In Part 13 of the National Health Service Act 2006 before section 248 insert – 20
“247B Secretary of State’s annual report
- (1) The Secretary of State must publish an annual report on the performance of the health service in England.
- (2) The Secretary of State must lay any report prepared under this section before Parliament.” 25
- 45 Amendments related to Part 1 and transitional provision**
- (1) Schedule 4 (which makes further amendments of the National Health Service Act 2006 in consequence of the provision made by this Part) has effect.
- (2) Schedule 5 (which makes amendments of other enactments in consequence of the provision made by this Part) has effect. 30
- (3) Schedule 6 (which makes transitional provision in connection with this Part) has effect.

PART 2

FURTHER PROVISION ABOUT PUBLIC HEALTH

- 46 Abolition of Health Protection Agency** 35
- (1) The Health Protection Agency is abolished.

- (2) The Health Protection Agency Act 2004 is repealed.
- (3) Subsection (2) does not apply to—
- (a) paragraph 3 of Schedule 3 to that Act (which amends Schedule 2 to the Immigration Act 1971), and
 - (b) section 11(1) of that Act so far as it gives effect to that paragraph. 5

47 Functions in relation to biological substances

- (1) The appropriate authority must—
- (a) devise standards for the purity and potency of biological substances,
 - (b) prepare, approve, hold and distribute standard preparations of biological substances, 10
 - (c) design appropriate procedures for testing biological substances,
 - (d) provide or arrange for the provision of laboratory facilities for testing biological substances,
 - (e) carry out tests on biological substances,
 - (f) examine records kept in connection with the manufacture and quality control of biological substances, 15
 - (g) report on the results of tests or examinations conducted in pursuance of paragraph (e) or (f), and
 - (h) carry out or arrange for the carrying out of such research, or provide or arrange for the provision of such information or training, as it considers appropriate in connection with the functions mentioned in paragraphs (a) to (g). 20
- (2) The appropriate authority may do anything which it considers is appropriate for facilitating, or incidental or conducive to, the exercise of any of its functions under this section. 25
- (3) Subsections (4) and (5) apply to any person that exercises functions similar to those of the appropriate authority under this section (whether or not in relation to the United Kingdom).
- (4) The appropriate authority must co-operate with the person in the exercise of those functions. 30
- (5) The person must co-operate with the appropriate authority in the exercise of the authority's functions under this section.
- (6) *The appropriate authority may make charges (whether or not on a commercial basis) in respect of anything done by it under this section.*
- (7) In this section— 35
- “appropriate authority” means the Secretary of State and the Department of Health, Social Services and Public Safety in Northern Ireland acting jointly;
 - “biological substance” means a substance whose purity or potency cannot, in the opinion of the Secretary of State, be adequately tested by chemical means. 40

48 Radiation protection functions

- (1) The appropriate authority must take such steps as it considers appropriate for the purposes of protecting the public from radiation (whether ionising or not).

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- (2) The steps that may be taken under subsection (1) include—
- (a) the conduct of research or such other steps as the appropriate authority considers appropriate for advancing knowledge and understanding;
 - (b) providing technical services (whether in laboratories or otherwise);
 - (c) providing services for the prevention, diagnosis or treatment of illness arising from exposure to radiation; 5
 - (d) providing training;
 - (e) providing information and advice;
 - (f) making available the services of any person or any facilities.
- (3) The appropriate authority may do anything which it considers appropriate for facilitating, or incidental or conducive to, the exercise of any of its functions under this section. 10
- (4) *The appropriate authority may make charges (whether or not on a commercial basis) in respect of anything done by it under this section.*
- (5) In the exercise of any function under this section which relates to a matter in respect of which a Health and Safety body has a function, the appropriate authority must— 15
- (a) consult the body, and
 - (b) have regard to the body’s policies.
- (6) Each of the following is a Health and Safety body— 20
- (a) the Health and Safety Executive;
 - (b) the Health and Safety Executive for Northern Ireland.
- (7) In subsection (2)(f), “facilities” has the same meaning as in the National Health Service Act 2006.
- (8) In this section, “the appropriate authority” means— 25
- (a) the Scottish Ministers to the extent that the functions are exercisable within devolved competence (within the meaning of the Scotland Act 1998);
 - (b) the Department of Health, Social Services and Public Safety in Northern Ireland to the extent that the functions relate to a transferred matter (within the meaning of the Northern Ireland Act 1998); 30
 - (c) the Secretary of State in any other case.
- (9) In this section, “the public” means— 35
- (a) where the appropriate authority is the Secretary of State, the public in Wales, Scotland and Northern Ireland,
 - (b) where the appropriate authority is the Scottish Ministers, the public in Scotland, and
 - (c) where the appropriate authority is the Department of Health, Social Services and Public Safety in Northern Ireland, the public in Northern Ireland. 40
- (10) This section does not apply in relation to England.

49 Repeal of AIDS (Control) Act 1987

- (1) The AIDS (Control) Act 1987 is repealed.

- (2) The AIDS (Control) (Northern Ireland) Order 1987 (S.I. 1987/1832 (N.I. 18)) is revoked.

50 Co-operation with bodies exercising functions in relation to public health

In Part 13 of the National Health Service Act 2006, before section 248 (and the cross-heading preceding it) insert –

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“Co-operation in relation to public health functions

247A Co-operation in relation to public health functions

- (1) This section applies to any body or other person that exercises functions similar to those of the Secretary of State under section 2A (whether or not in relation to the United Kingdom). 10
- (2) The Secretary of State must co-operate with the body or other person in the exercise by it of those functions.
- (3) If the Secretary of State acts under subsection (2) at the request of the body or other person, the Secretary of State may impose charges in respect of any costs incurred by the Secretary of State in doing so. 15
- (4) The body or other person must co-operate with the Secretary of State in the exercise by the Secretary of State of functions under section 2A.
- (5) If the body or other person acts under subsection (4) at the request of the Secretary of State, it may impose charges in respect of any costs incurred by it in doing so.” 20

PART 3

ECONOMIC REGULATION OF HEALTH AND ADULT SOCIAL CARE SERVICES

CHAPTER 1

MONITOR

51 Monitor 25

- (1) The body corporate known as the Independent Regulator of NHS Foundation Trusts –
- (a) is to continue to exist, and
 - (b) is to be known as Monitor.
- (2) Schedule 7 (which makes further provision about Monitor) has effect. 30

52 General duties

- (1) The main duty of Monitor in exercising its functions is to protect and promote the interests of people who use health care services –
- (a) by promoting competition where appropriate, and
 - (b) through regulation where necessary. 35
- (2) In carrying out its main duty, Monitor must have regard in particular to the likely future demand for health care services.

- (3) Monitor must, in exercising its functions, promote the economic, efficient and effective provision of health care services for the purposes of the NHS.
 - (4) Monitor must exercise its functions in a manner consistent with the performance by the Secretary of State of the duty under section 1(1) of the National Health Service Act 2006 (promotion of comprehensive health service). 5
 - (5) But nothing in this section requires Monitor to do anything in relation to the supply to persons who provide health care services of goods that are to be provided as part of those services.
 - (6) A reference in this Part to health care services is a reference to the services to which Monitor’s functions relate. 10
 - (7) “Health care” means all forms of health care provided for individuals, whether relating to physical or mental health.
 - (8) “The NHS” means the comprehensive health service continued under section 1(1) of the National Health Service Act 2006, except the part of it that is provided in pursuance of the public health functions (within the meaning of that Act) of the Secretary of State or local authorities. 15
 - (9) A reference in this Part to the provision of health care services for the purposes of the NHS is a reference to their provision for those purposes in accordance with that Act.
- 53 Power to give Monitor functions relating to adult social care services 20**
- (1) Regulations may provide for specified functions of Monitor also to be exercisable in relation to adult social care services.
 - (2) The regulations may amend this Part.
 - (3) “Adult social care” –
 - (a) includes all forms of personal care and other practical assistance provided for individuals who by reason of age, illness, disability, pregnancy, childbirth, dependence on alcohol or drugs, or any other similar circumstances, are in need of such care or other assistance, but 25
 - (b) does not include anything provided by an establishment or agency for which Her Majesty’s Chief Inspector of Education, Children’s Services and Skills is the registration authority under section 5 of the Care Standards Act 2000. 30
- 54 Matters to have regard to in exercise of functions**
- In exercising its functions, Monitor must have regard to –
- (a) the need to maintain the safety of people who use health care services, 35
 - (b) the desirability of securing continuous improvement in the quality of health care services for the purposes of the NHS,
 - (c) the desirability of securing continuous improvement in the efficiency with which health care services are provided for the purposes of the NHS, 40
 - (d) the need for commissioners of health care services for the purposes of the NHS to ensure that the provision of access to the services for those purposes operates fairly,

- (e) the need for commissioners of health care services for the purposes of the NHS to ensure that people who require health care services for those purposes are provided with access to them,
- (f) the need for commissioners of health care services for the purposes of the NHS make the best use of resources when doing so, 5
- (g) the desirability of promoting investment by providers of health care services for the purposes of the NHS in the provision of health care services for those purposes,
- (h) the need to promote research into matters relevant to the NHS by persons who provide health care services for the purposes of the NHS, 10
- (i) the need for high standards in the education and training of health care professionals who provide health care services for the purposes of the NHS,
- (j) the manner in which the Secretary of State performs the duty under section 1A(1) of the National Health Service Act 2006 (improvement in quality of services), and 15
- (k) the manner in which the National Health Service Commissioning Board performs the duties under section 1D(3) of that Act (commissioning of services),
- (l) the manner in which the National Health Service Commissioning Board performs the duty under section 13D(1) of that Act (improvement in quality of services). 20

55 Conflicts between functions

- (1) In a case where Monitor considers that any of its general duties conflict with each other, it must secure that the conflict is resolved in the manner it considers best. 25
- (2) Monitor must act so as to secure that there is not, and could not reasonably be regarded as being, a conflict between—
 - (a) its exercise of any of its functions under Chapter 5 of Part 2 of the National Health Service Act 2006 (regulation of NHS foundation trusts) or under sections 101 and 102 of this Act (designation of NHS foundation trusts in transitional period), and 30
 - (b) its exercise of any of its other functions.
- (3) Monitor must ignore the functions it has under sections 101 and 102 when exercising— 35
 - (a) its functions under Chapter 2 (competition),
 - (b) such of its functions under Chapter 4 (licensing) as relate to securing the continued provision of designated services, or
 - (c) its functions under Chapter 5 (pricing).
- (4) If Monitor secures the resolution of a conflict between its general duties in a case that comes within subsection (5), or that Monitor considers is otherwise of unusual importance, it must publish a statement setting out— 40
 - (a) the nature of the conflict,
 - (b) the manner in which it decided to resolve it, and
 - (c) its reasons for deciding to resolve it in that manner. 45
- (5) A case comes within this subsection if it involves—
 - (a) a matter likely to have a significant impact on persons who provide health care services for the purposes of the NHS;

- (b) a matter likely to have a significant impact on people who use health care services provided for the purposes of the NHS;
 - (c) a matter likely to have a significant impact on the general public in England (or in a particular part of England);
 - (d) a major change in the activities Monitor carries on; 5
 - (e) a major change in the standard conditions of licences under Chapter 4 (see section 87).
 - (6) Where Monitor is required to publish a statement under subsection (4), it must do so as soon as reasonably practicable after making its decision.
 - (7) The duty under subsection (4) does not apply in so far as Monitor is subject to an obligation not to publish a matter that needs to be included in the statement. 10
 - (8) Every annual report of Monitor must include –
 - (a) a statement of the steps it has taken in the financial year to which the report relates to comply with the duty under subsection (2), and
 - (b) a summary of the manner in which, in that financial year, Monitor has secured the resolution of conflicts between its general duties arising in cases of the kind referred to in subsection (5). 15
 - (9) Monitor’s general duties for the purposes of this section are its duties under sections 52 and 54.
- 56 Duty to review regulatory burdens 20**
- (1) Monitor must keep the exercise of its functions under review and secure that in exercising its functions it does not –
 - (a) impose burdens which it considers to be unnecessary, or
 - (b) maintain burdens which it considers to have become unnecessary.
 - (2) In keeping the exercise of its functions under review, Monitor must have regard to such principles as appear to it to represent best regulatory practice. 25
 - (3) Subsection (1) does not require the removal of a burden which has become unnecessary where its removal would, having regard to all the circumstances, be impractical or disproportionate.
 - (4) Monitor must from time to time publish a statement setting out – 30
 - (a) what it proposes to do pursuant to subsection (1) in the period to which the statement relates,
 - (b) what it has done pursuant to that subsection since publishing the previous statement, and
 - (c) where a burden relating to the exercise of the function which has become unnecessary is maintained pursuant to subsection (3), the reasons why removal of the burden would, having regard to all the circumstances, be impractical or disproportionate. 35
 - (5) The first statement –
 - (a) must be published as soon as practicable after the commencement of this section, and 40
 - (b) must relate to the period of 12 months beginning with the date of publication.
 - (6) A subsequent statement –

-
- (a) must be published during the period to which the previous statement related or as soon as reasonably practicable after that period, and
 - (b) must relate to the period of 12 months beginning with the end of the previous period.
- (7) Monitor must, in exercising its functions, have regard to the statement that is in force at the time in question. 5
- (8) Monitor may revise a statement before or during the period to which it relates; and, if it does so, it must publish the revision as soon as reasonably practicable.
- 57 Duty to carry out impact assessments**
- (1) This section applies where Monitor is proposing to do something that it considers would – 10
- (a) be likely to have a significant impact on persons who provide health care services for the purposes of the NHS;
 - (b) be likely to have a significant impact on people who use health care services provided for the purposes of the NHS; 15
 - (c) be likely to have a significant impact on the general public in England (or in a particular part of England);
 - (d) be likely to involve a major change in the activities Monitor carries on;
 - (e) be likely to involve a major change in the standard conditions of licences under Chapter 4 (see section 87). 20
- (2) But this section does not apply to –
- (a) the exercise of functions that Monitor has by virtue of section 60 or 61,
 - (b) the carrying out by Monitor of an analysis of how markets involving the provision of health care services are operating, or
 - (c) the exercise of functions under Chapter 2. 25
- (3) Nor does this section apply if it appears to Monitor that the urgency of the matter makes compliance with this section impracticable or inappropriate.
- (4) Before implementing the proposal, Monitor must either –
- (a) carry out and publish an assessment of the likely impact of implementation, or 30
 - (b) publish a statement setting out its reasons for concluding that it does not need to carry out an assessment under paragraph (a).
- (5) The assessment must set out Monitor’s explanation of how the discharge of its general duties (within the meaning of section 55) – 35
- (a) would be secured by implementation of the proposal, but
 - (b) would not be secured by the exercise of functions that Monitor has by virtue of section 60 or 61.
- (6) The assessment may take such form, and relate to such matters, as Monitor may determine; and in determining the matters to which the assessment is to relate, Monitor must have regard to such general guidance on carrying out impact assessments as it considers appropriate. 40
- (7) The assessment must specify the consultation period within which representations with respect to the proposal may be made to Monitor; and for that purpose the consultation period must not be less than 28 days beginning with the day after that on which the notice is published under subsection (4). 45

- (8) Monitor may not implement the proposal unless the consultation period has ended.
- (9) Where Monitor is required (apart from this section) to consult about, or afford a person an opportunity to make representations about, a proposal that comes within subsection (1), the requirements of this section – 5
- (a) are in addition to the other requirement, but
 - (b) may be met contemporaneously with it.
- (10) Every annual report of Monitor must set out – 10
- (a) a list of the assessments carried out under this section during the financial year to which the report relates, and
 - (b) a summary of the decisions taken during that year in relation to proposals to which assessments carried out during that year or a previous financial year relate.
- 58 Information**
- (1) Information obtained by, or documents, records or other items produced to, Monitor in connection with any of its functions may be used by Monitor in connection with any of its other functions. 15
- (2) For the purposes of exercising a function under this Part, the Secretary of State may request Monitor to provide the Secretary of State with such information as the Secretary of State may specify. 20
- (3) Monitor must comply with a request under subsection (2).
- 59 Failure to perform functions**
- (1) This section applies if the Secretary of State considers that Monitor is failing, or has failed, to perform a function.
- (2) The Secretary of State may direct Monitor to perform such of those functions, and in such manner and within such period, as the direction specifies. 25
- (3) If Monitor fails to comply with a direction under this section, the Secretary of State may – 30
- (a) perform the functions to which the direction relates, or
 - (b) make arrangements for some other person to perform them on the Secretary of State’s behalf.
- (4) Reference in subsection (1) to failure to perform a function includes a reference to failure to perform it properly.
- CHAPTER 2**
- COMPETITION 35
- 60 Functions under the Competition Act 1998**
- (1) The functions referred to in subsection (2) are concurrent functions of Monitor and the Office of Fair Trading.
- (2) The functions are those that the Office of Fair Trading has under Part 1 of the Competition Act 1998 (other than sections 31D(1) to (6), 38(1) to (6) and 51) so 40

far as relating to any of the following which concern the provision of health care services in England –

- (a) agreements, decisions or concerted practices of the kind mentioned in section 2(1) of that Act,
 - (b) conduct of the kind mentioned in section 18(1) of that Act, 5
 - (c) agreements, decisions or concerted practices of the kind mentioned in Article 101 of the Treaty on the Functioning of the European Union,
 - (d) conduct which amounts to abuse of the kind mentioned in Article 102 of that Treaty.
- (3) So far as necessary for the purposes of subsections (1) and (2), references to the Office of Fair Trading in Part 1 of the Competition Act 1998 are to be read as including references to Monitor (except in sections 31D(1) to (6), 38(1) to (6), 51, 52(6) and (8) and 54). 10

61 Functions under Part 4 of the Enterprise Act 2002

- (1) The functions referred to in subsection (2) are concurrent functions of Monitor and the Office of Fair Trading. 15
- (2) The functions are those that the Office of Fair Trading has under Part 4 of the Enterprise Act 2002 (market investigations), other than sections 166 and 171, so far as relating to activities which concern the provision of health care services in England. 20
- (3) So far as necessary for the purposes of subsections (1) and (2), references in Part 4 of the Enterprise Act 2002 to the Office of Fair Trading (including references in provisions of that Act applied by that Part) must be construed as including references to Monitor, except in sections 166 and 171.
- (4) Before the Office of Fair Trading or Monitor first exercises functions which are exercisable concurrently by virtue of this section, it must consult the other. 25
- (5) Neither the Office of Fair Trading nor Monitor may exercise in relation to any matter functions which are exercisable concurrently by virtue of this section if functions which are so exercisable have been exercised in relation to that matter by the other. 30
- (6) Section 117 of the Enterprise Act 2002 (offences of supplying false or misleading information) as applied by section 180 of that Act is to have effect so far as relating to functions exercisable by Monitor by virtue of this section as if the references in section 117(1)(a) and (2) to the Office of Fair Trading included references to Monitor. 35

62 Competition functions: supplementary

- (1) No objection may be taken to anything done by or in relation to Monitor under the Competition Act 1998 or Part 4 of the Enterprise Act 2002 on the ground that it should have been done by or in relation to the Office of Fair Trading.
- (2) Subject to subsection (3), sections 52 (general duties of Monitor) and 54 (matters to which Monitor must have regard) do not apply in relation to anything done by Monitor in the carrying out of its functions by virtue of section 60 or section 61. 40
- (3) In the carrying out of any functions by virtue of section 60 or 61, Monitor may nevertheless have regard to any of the matters in respect of which a duty is 45

imposed by section 52 or 54 if it is a matter to which the Office of Fair Trading is entitled to have regard in the carrying out of those functions.

- (4) In section 9E of the Company Directors Disqualification Act 1986 (specified regulators in cases of disqualification for competition infringements), in subsection (2) after paragraph (e) insert “;
(f) Monitor.” 5
- (5) In section 54 of the Competition Act 1998, in subsection (1) (definition of “regulator” for the purposes of Part 1 of that Act) –
 - (a) omit the “and” preceding paragraph (g), and
 - (b) after that paragraph insert “; and
(h) Monitor.” 10
- (6) In section 136 of the Enterprise Act 2002 (investigations and reports on market investigation references) –
 - (a) in subsection (7) (meaning of “relevant sectoral enactment”), at the end insert –
 - “(i) in relation to Monitor, sections 60 and 61 of the Health and Social Care Act 2011.”, 15
 - (b) in subsection (8) (meaning of “relevant sectoral regulator”), for “Communications or” substitute “Communications,”, and
 - (c) in that subsection, after “Utility Regulation” insert “or Monitor”. 20
- (7) In section 168 of that Act (regulated markets) –
 - (a) in subsection (3) (meaning of “relevant action”), after paragraph (n) insert –
 - “(o) modifying the conditions of a licence issued under section 80 of the Health and Social Care Act 2011.”, 25
 - (b) in subsection (4) (meaning of “relevant statutory functions”), after paragraph (p) insert –
 - “(q) in relation to any licence issued under section 80 of the Health and Social Care Act 2011, the duties of Monitor under sections 52 and 54 of that Act.”, and 30
 - (c) in subsection (5) (meaning of “sectoral regulator”), after paragraph (i) insert –
 - “(ia) Monitor;”. 30

63 Requirements as to good procurement practice, etc.

- (1) Regulations may impose requirements on the National Health Service Commissioning Board and commissioning consortia for the purpose of securing that, in commissioning health care services for the purposes of the NHS, they –
 - (a) adhere to good practice in relation to procurement,
 - (b) protect and promote the right of patients to make choices with respect to treatment or other health care services provided for the purposes of the NHS, 40
 - (c) promote competition in the provision of health care services for those purposes.
- (2) Subsection (1) applies to an arrangement for the provision of goods and services only if the value of the consideration attributable to the services is greater than that attributable to the goods. 45

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- (3) Regulations under this section may, in particular, impose requirements relating to –
- (a) competitive tendering for the provision of services;
 - (b) the management of conflicts between the interests involved in commissioning services and the interests involved in providing them. 5
- (4) The regulations may provide for the requirements imposed, or such of them as are prescribed, not to apply in relation to arrangements of a prescribed description.
- 64 Powers in relation to requirements imposed under section 63**
- (1) Regulations under section 63 may confer on Monitor – 10
- (a) a power to investigate a complaint that the National Health Service Commissioning Board or a commissioning consortium has failed to comply with a requirement imposed by the regulations;
 - (b) a power to require the Board or a commissioning consortium to provide it with such information as Monitor may specify for the purposes of an investigation it carries out by virtue of paragraph (a); 15
 - (c) a power to require the Board or a commissioning consortium to provide an explanation of such information as it provides by virtue of paragraph (b).
- (2) A power conferred by virtue of subsection (1)(a) is exercisable only where Monitor considers that the person making the complaint has sufficient interest in the arrangement to which the complaint relates. 20
- (3) Regulations under section 63 may confer on Monitor –
- (a) a power to declare that an arrangement for the provision of health care services for the purposes of the NHS is ineffective, and 25
 - (b) a power, having made a declaration by virtue of paragraph (a), to direct the National Health Service Commissioning Board or commissioning consortium to put the provision of the services out to tender.
- (4) The powers conferred by virtue of subsection (3) are exercisable only in prescribed circumstances and subject to prescribed restrictions and only where Monitor is satisfied that – 30
- (a) the National Health Service Commissioning Board or a commissioning consortium has failed to comply with a requirement of regulations under section 63, and
 - (b) the failure is sufficiently serious. 35
- (5) On a declaration being made by virtue of subsection (3)(a), the arrangement is void; but that does not affect –
- (a) the validity of anything done pursuant to the arrangement,
 - (b) any right acquired or liability incurred under the arrangement, or
 - (c) any proceedings or remedy in respect of such a right or liability. 40
- (6) Regulations under section 63 may confer on Monitor a power to direct the National Health Service Commissioning Board or a commissioning consortium –
- (a) to put in place measures for the purpose of preventing failures to comply with requirements imposed by the regulations or mitigating the effect of such failures; 45
 - (b) to remedy a failure to comply with such a requirement;

- (c) not to exercise in a prescribed manner prescribed functions in relation to arrangements for the provision of health care services;
 - (d) to vary or withdraw an invitation to tender for the provision of health care services;
 - (e) to vary an arrangement for the provision of health care services made in consequence of putting the provision of the services out to tender. 5
 - (7) A failure to comply with a requirement imposed by regulations under section 63 which causes loss or damage is actionable, except in so far as the regulations restrict the right to bring such an action.
 - (8) Regulations under section 63 may – 10
 - (a) provide for a specified defence to such an action;
 - (b) prevent a person who has brought such an action under the Public Contracts Regulations 2006 (S.I. 2006/5) from bringing such an action under the regulations under section 63 in respect of the whole or part of the same loss or damage. 15
- 65 Mergers involving NHS foundation trusts**
- (1) Part 3 of the Enterprise Act 2002 (mergers) applies (in so far as it would not otherwise) to each of the following cases as it applies to a case where two or more enterprises have ceased to be distinct enterprises.
 - (2) The first case is where the activities of two or more NHS foundation trusts have ceased to be distinct activities. 20
 - (3) The second case is where the activities of one or more NHS foundation trusts and the activities of one or more businesses have ceased to be distinct activities.
 - (4) In subsections (2) and (3), a reference to the activities of an NHS foundation trust or a business includes a reference to part of its activities. 25
 - (5) In this section, “enterprise” and “business” each have the same meaning as in Part 3 of the Enterprise Act 2002.
- 66 Reviews by the Competition Commission**
- (1) The Competition Commission must review – 30
 - (a) the development of competition in the provision of health care services for the purposes of the NHS, and
 - (b) the exercise by Monitor of its functions under this Part in relation to the provision of health care services for those purposes.
 - (2) Before beginning a review under this section, the Commission must publish a notice specifying the matters it proposes to consider in the review. 35
 - (3) In carrying out the review, the Commission must consider whether those matters have or may be expected to have any effects adverse to the public interest.
 - (4) The Commission must complete the review, and publish a report of it, before the end of the period of 12 months beginning with the day on which the notice relating to the review was published under subsection (2). 40
 - (5) The Commission must send a copy of the report to –
 - (a) the Secretary of State,

-
- (b) Monitor, and
 - (c) the National Health Service Commissioning Board.
- (6) Where the Commission concludes that one or more of the matters it considered in the review has or may be expected to have effects adverse to the public interest, it must include in the report its recommendations to the Secretary of State, Monitor and the National Health Service Commissioning Board as to how to remedy those effects. 5
- (7) Each of those persons must reply to the Commission to say what the person proposes to do in the light of the recommendations; the reply must be made before the end of the period of six months beginning with the day on which the report was published. 10
- (8) Where the Commission is carrying out a review under this section, Monitor must give the Commission –
- (a) such information in Monitor’s possession as the Commission may require to enable it to carry out the review, 15
 - (b) such other information in Monitor’s possession as it considers would assist the Commission in carrying out the review, and
 - (c) such other assistance as the Commission may require to assist it in carrying out the review.
- (9) The first review under this section must begin before the end of 2019. 20
- (10) A subsequent review under this section must begin before the end of the period of seven years beginning with the date on which the Commission published the report of the previous review under this section.
- (11) For the purposes of the law of defamation, absolute privilege attaches to a report under this section. 25
- (12) In paragraph 19A of Schedule 7 to the Competition Act 1998 (duty of Chairman to make rules of procedure), in the definition of “special reference group” in sub-paragraph (9) –
- (a) after “an investigation” insert “or (in the case of the Health and Social Care Act 2011) a review”, 30
 - (b) omit the “or” preceding paragraph (p), and
 - (c) after that paragraph insert “; or
 - (q) section 66 of the Health and Social Care Act 2011.”
- 67 Reviews under section 66: considerations relevant to publication**
- (1) Before publishing a report under section 66, the Competition Commission must have regard to the following considerations. 35
- (2) The first consideration is the need to exclude from publication (so far as practicable) information the publication of which the Commission considers would be contrary to the public interest.
- (3) The second consideration is the need to exclude from publication (so far as practicable) – 40
- (a) commercial information the publication of which the Commission considers might significantly harm the legitimate business interests of a person to whom it relates, or

- (b) information relating to the private affairs of an individual the publication of which the Commission considers might significantly harm the individual's interests.
 - (4) The third consideration is the extent to which publication of information mentioned in subsection (3)(a) or (b) is necessary for the purposes of the report. 5
- 68 Co-operation with the Office of Fair Trading**
- (1) Monitor and the Office of Fair Trading must co-operate with each other in the exercise of their respective functions under the Competition Act 1998 and the Enterprise Act 2002.
 - (2) In particular each must give the other – 10
 - (a) such information in its possession as the other may require to enable it to exercise those functions,
 - (b) such other information in its possession as it considers would assist the other in exercising those functions, and
 - (c) such other assistance as the other may require to assist it in exercising those functions. 15

CHAPTER 3

DESIGNATED SERVICES

- 69 Designation of services**
- (1) The commissioner of a health care service for the purposes of the NHS may apply to Monitor for the designation of the service for the purposes of this Part. 20
 - (2) The commissioner may make the application only if –
 - (a) it has consulted the relevant persons, and
 - (b) it is satisfied the criterion in subsection (3) is met.
 - (3) The criterion is that ceasing to provide the service concerned for the purposes of the NHS would, in the absence of alternative arrangements for the provision of the service for those purposes, be likely to – 25
 - (a) have a significant adverse impact on the health of persons in need of the service, or
 - (b) cause a failure to prevent or ameliorate a significant adverse impact on the health of such persons. 30
 - (4) In determining whether that criterion is met, the commissioner must (in so far as it would not otherwise be required to do so) have regard to –
 - (a) the current and future need for the provision of the service for the purposes of the NHS, 35
 - (b) whether ceasing to provide the service for those purposes would significantly reduce equality between those for whom the commissioner arranges for the provision of services with respect to their ability to access services provided for those purposes, and
 - (c) such other matters as may be specified in guidance under section 73. 40
 - (5) An application under this section must be accompanied by copies of the responses the commissioner received to the consultation under subsection (2)(a).

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- (6) Monitor must grant an application under this section if –
- (a) having regard to the matters in subsection (4), it is satisfied that the criterion in subsection (3) is met, and
 - (b) it is satisfied that the commissioner carried out consultation in accordance with subsection (2)(a). 5
- (7) Where Monitor grants an application under this section, it must give notice of the designation of the service concerned to –
- (a) the commissioner, and
 - (b) every relevant person.
- (8) A notice under subsection (7) given to a provider of a service for the purposes of the NHS must explain the right of appeal conferred by section 70. 10
- (9) Where the applicant under this section is the National Health Service Commissioning Board, the relevant persons are –
- (a) the Secretary of State,
 - (b) the Care Quality Commission and its Healthwatch England committee, 15
 - (c) every local authority in whose area the service is provided for the purposes of the NHS,
 - (d) every local Healthwatch organisation in whose area the service is provided for those purposes,
 - (e) every person who, in pursuance of arrangements with the Board, provides the services for the purposes of the NHS, and 20
 - (f) such other persons as the Board considers appropriate.
- (10) Where the applicant under this section is a commissioning consortium, the relevant persons are –
- (a) every local authority in whose area the service is provided for the purposes of the NHS, 25
 - (b) every local Healthwatch organisation in whose area the service is provided for those purposes,
 - (c) every person who, in pursuance of arrangements with the consortium, provides the service for the purposes of the NHS, and 30
 - (d) such other persons as the consortium considers appropriate.
- (11) Where the applicant under this section is the Secretary of State, or a person acting on the Secretary of State’s behalf, by virtue of section 13U of the National Health Service Act 2006, the relevant persons are –
- (a) the Healthwatch England committee of the Care Quality Commission, 35
 - (b) every local authority,
 - (c) every local Healthwatch organisation in whose area the service in question is provided,
 - (d) the National Health Service Commissioning Board, and
 - (e) such other persons as the Secretary of State or person acting on the Secretary of State’s behalf considers appropriate. 40

70 Appeals to the Tribunal

- (1) An appeal by a provider of a designated service against Monitor’s decision to designate that service lies to the First-tier Tribunal.
- (2) A person may bring an appeal under this section only if – 45
- (a) the person has made a complaint under section 71(8), and

- (b) Monitor has notified the person of its decision on the complaint.
- (3) The grounds for an appeal under this section are that the decision to make the designation was –
 - (a) based on an error of fact,
 - (b) wrong in law, or
 - (c) unreasonable.
- (4) On an appeal under this section, the First-tier Tribunal may confirm Monitor’s decision or direct that it is not to have effect.

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71 Reviews and removals of designations

- (1) The commissioner of a designated service must, during the relevant period, review the designation so as to establish whether, having regard to the matters in subsection (4) of that section, it is satisfied that the criterion in subsection (3) of that section continues to be met. 10
- (2) The relevant period is –
 - (a) for the first review under subsection (1), the period – 15
 - (i) beginning with the expiry of the period of one year after the date of the notice under section 69(7), and
 - (ii) ending with the expiry of the period of ten years after that date, and
 - (b) for a subsequent review under subsection (1), the period – 20
 - (i) beginning with the expiry of the period of one year after the date on which the previous review under that subsection was completed, and
 - (ii) ending with the expiry of the period of ten years after that date.
- (3) The commissioner of a designated service may (whether or not in consequence of a review under subsection (1)) apply to Monitor for the removal of the designation. 25
- (4) The commissioner may make the application only if –
 - (a) it has consulted the relevant persons, and
 - (b) having regard to the matters in subsection (4) of section 69, it is satisfied that the criterion in subsection (3) of that section is no longer met. 30
- (5) An application under subsection (3) must be accompanied by copies of the responses the commissioner received to the consultation under subsection (4)(a).
- (6) Monitor must grant an application under subsection (3) if – 35
 - (a) having regard to the matters in subsection (4) of section 69, it is satisfied that the criterion in subsection (3) of that section is no longer met, and
 - (b) it is satisfied that the commissioner carried out consultation in accordance with subsection (4)(a).
- (7) Where Monitor grants an application under subsection (3), it must give notice of the removal of the designation to – 40
 - (a) the commissioner, and
 - (b) every relevant person.

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- (8) Monitor may, on a complaint by a provider of a designated service, remove a designation under section 69 if –
- (a) it has consulted the commissioner who applied for the designation, and
 - (b) having regard to the matters in subsection (4) of section 69, it is satisfied that the criterion in subsection (3) of that section is no longer met. 5
- (9) A complaint under subsection (8) must be made before the end of the period of 28 days beginning with the day on which the designation is made.
- (10) Where Monitor removes a designation on a complaint under subsection (8), it must give notice of the removal of the designation to –
- (a) the provider who made the complaint, 10
 - (b) the commissioner who applied for the designation, and
 - (c) every relevant person.
- (11) The relevant persons for the purposes of this section are the persons who are the relevant persons for the purposes of section 69.
- 72 Designations affecting more than one commissioner 15**
- (1) The National Health Service Commissioning Board must make arrangements for facilitating agreement between commissioning consortia as to –
- (a) whether to apply for designation of a service under section 69;
 - (b) which consortium is to apply for designation of a service under that section (and is accordingly, if the application is granted, to have power to review and apply for the removal of the designation). 20
- (2) Where commissioning consortia fail to reach agreement on a matter in pursuance of arrangements under subsection (1), the National Health Service Commissioning Board may determine the matter; and the consortia concerned must comply with that determination. 25
- (3) Regulations may make provision as to the determination of matters on which commissioning consortia fail to reach agreement in pursuance of arrangements under subsection (1).
- (4) Where regulations under subsection (3) are in force, the power conferred on the National Health Service Commissioning Board by subsection (2) must be exercised in accordance with the regulations. 30
- 73 Guidance**
- (1) Monitor must publish guidance on –
- (a) applying for designation of a service under section 69;
 - (b) reviewing a designation under section 71; 35
 - (c) applying for removal of a designation under that section.
- (2) Before publishing guidance under this section, Monitor must –
- (a) consult the persons in subsection (3), and
 - (b) obtain the approval of the National Health Service Commissioning Board. 40
- (3) The persons to be consulted are –
- (a) the Secretary of State,
 - (b) the Care Quality Commission and its Healthwatch England committee,

- (c) every local authority in England,
 - (d) every commissioning consortium,
 - (e) every licence holder, and
 - (f) such other persons as Monitor considers appropriate.
- (4) Monitor must give each consultee notice of the duration of the consultation period in relation to the proposed guidance; and for that purpose the consultation period is the period of 28 days beginning with the day after that on which the notice is given. 5
- (5) Monitor may revise guidance under this section and, if it does so, must publish the guidance as revised. 10

CHAPTER 4

LICENSING

Licensing requirement

74 Requirement for health service providers to be licensed

- (1) Any person who provides a health care service for the purposes of the NHS must hold a licence under this Chapter. 15
- (2) Regulations may make provision for the purposes of this Chapter for determining, in relation to a service provided by two or more persons acting in different capacities, which of those persons is to be regarded as the person who provides the service. 20

75 Deemed breach of requirement to be licensed

- (1) This section applies where a licence holder –
- (a) in providing a health care service for the purposes of the NHS, carries on a regulated activity (within the meaning of Part 1 of the Health and Social Care Act 2008), but 25
 - (b) is not registered under Chapter 2 of Part 1 of that Act in respect of the carrying on of that activity.
- (2) The licence holder is to be regarded as providing the service in breach of the requirement under section 74 to hold a licence.

76 Exemption regulations 30

- (1) Regulations (referred to in this section and section 77 as “exemption regulations”) may provide for the grant of exemptions from the requirement in section 74(1) in respect of –
- (a) a prescribed person or persons of a prescribed description;
 - (b) the provision of a prescribed health care service or a health care service of a prescribed description. 35
- (2) Exemption regulations may grant an exemption –
- (a) either generally or to the extent prescribed;
 - (b) either unconditionally or subject to prescribed conditions;

-
- (c) indefinitely, for a prescribed period or for a period determined by or under the exemption.
- (3) Conditions subject to which an exemption may be granted include, in particular, conditions requiring a person providing a service pursuant to the exemption – 5
- (a) to comply with any direction given by Monitor about such matters as are specified in the exemption or are of a description so specified,
- (b) except to the extent that Monitor otherwise approves, to do, or not to do, such things as are specified in the exemption or are of a description so specified (or to do, or not to do, such things in a specified manner), and 10
- (c) to refer for determination by Monitor such questions arising under the exemption as are specified in the exemption or are of a description so specified.
- (4) Before making exemption regulations the Secretary of State must give notice to – 15
- (a) Monitor,
- (b) the National Health Service Commissioning Board, and
- (c) the Care Quality Commission and its Healthwatch England committee.
- (5) The Secretary of State must also publish the notice under subsection (4). 20
- (6) The notice under subsection (4) must –
- (a) state that the Secretary of State proposes to make exemption regulations and set out their proposed effect,
- (b) set out the Secretary of State’s reasons for the proposal, and
- (c) specify the period (“the notice period”) within which representations with respect to the proposal may be made. 25
- (7) The notice period must be not less than 28 days beginning with the day after that on which the notice is published under subsection (4).
- (8) Where an exemption is granted to a person, the Secretary of State – 30
- (a) must give the person notice of the exemption, and
- (b) must publish the exemption.
- 77 Exemption regulations: supplementary**
- (1) Regulations may revoke exemption regulations by which an exemption was granted to a person, or amend such regulations by which more than one exemption was so granted so as to withdraw any of the exemptions – 35
- (a) at the person’s request,
- (b) in accordance with any provision of the exemption regulations by which the exemption was granted, or
- (c) if the Secretary of State considers it to be inappropriate for the exemption to continue to have effect. 40
- (2) Regulations may revoke exemption regulations by which an exemption was granted to persons of a prescribed description, or amend such regulations by which more than one exemption was so granted so as to withdraw any of the exemptions –
- (a) in accordance with any provision of the exemption regulations by which the exemption was granted, or 45

- (b) if the Secretary of State considers it to be inappropriate for the exemption to continue to have effect.
- (3) The Secretary of State may by direction withdraw an exemption granted to persons of a description prescribed in exemption regulations for any person of that description – 5
 - (a) at the person’s request,
 - (b) in accordance with any provision of the exemption regulations by which the exemption was granted, or
 - (c) if the Secretary of State considers it to be inappropriate for the exemption to continue to have effect in the case of the person. 10
- (4) Subsection (5) applies where the Secretary of State proposes to –
 - (a) make regulations under subsection (1)(b) or (c) or (2), or
 - (b) give a direction under subsection (3)(b) or (c).
- (5) The Secretary of State must – 15
 - (a) consult the following about the proposal –
 - (i) Monitor;
 - (ii) the National Health Service Commissioning Board;
 - (iii) the Care Quality Commission and its Healthwatch England committee;
 - (b) where the Secretary of State is proposing to make regulations under subsection (1)(b) or (c), give notice of the proposal to the person to whom the exemption was granted; 20
 - (c) where the Secretary of State is proposing to make regulations under subsection (2), publish the notice.
- (6) The notice must – 25
 - (a) state that the Secretary of State proposes to make the regulations or give the direction (as the case may be),
 - (b) set out the Secretary of State’s reasons for the proposal, and
 - (c) specify the period within which representations with respect to the proposal may be made. 30

Licensing procedure

78 Application for licence

- (1) A person seeking to hold a licence under this Chapter must make an application to Monitor.
- (2) The application must be made in such form, and contain or be accompanied by such information, as Monitor requires. 35

79 Licensing criteria

- (1) Monitor must set and publish the criteria which must be met by a person in order for that person to be granted a licence under this Chapter.
- (2) Monitor may revise the criteria and, if it does so, must publish them as revised. 40
- (3) Before setting or revising the criteria, Monitor must obtain the approval of the Secretary of State.

80 Grant or refusal of licence

- (1) This section applies where an application for a licence has been made under section 78.
- (2) If Monitor is satisfied that the applicant meets the criteria for holding a licence for the time being published under section 79 it must as soon as reasonably practicable grant the application; otherwise it must refuse it. 5
- (3) On granting the application, Monitor must issue a licence to the applicant.
- (4) A licence issued under this section is subject to—
 - (a) such of the standard conditions (see section 87) as are applicable to the licence, 10
 - (b) such other conditions included in the licence by virtue of section 88 (referred to in this Chapter as “the special conditions”), and
 - (c) any conditions included in the licence by virtue of section 102 (imposition of licence conditions on designated NHS foundation trusts). 15

81 Application and grant: NHS foundation trusts

- (1) This section applies where an NHS trust becomes an NHS foundation trust pursuant to section 36 of the National Health Service Act 2006 (effect of authorisation of NHS foundation trust).
- (2) The NHS foundation trust is to be treated by Monitor as having— 20
 - (a) duly made an application for a licence under section 78, and
 - (b) met the criteria for holding a licence for the time being published under section 79.
- (3) An NHS foundation trust in existence on the day on which this section comes into force is to be treated for the purposes of this section as having become an NHS foundation trust pursuant to section 36 of the National Health Service Act 2006 on that day. 25

82 Revocation of licence

- Monitor may at any time revoke a licence under this Chapter—
- (a) on the application of the licence holder, or 30
 - (b) if Monitor is satisfied that the licence holder has failed to comply with a condition of the licence.

83 Right to make representations

- (1) Monitor must give notice— 35
 - (a) to an applicant for a licence under this Chapter of a proposal to refuse the application;
 - (b) to the licence holder of a proposal to revoke a licence under section 82(b).
- (2) A notice under this section must— 40
 - (a) set out Monitor’s reasons for its proposal;
 - (b) specify the period within which representations with respect to the proposal may be made to Monitor.

- (3) The period so specified must be not less than 28 days beginning with the day after that on which the notice is received.

84 Notice of decisions

- (1) This section applies if Monitor decides to –
 - (a) refuse an application for a licence under section 80, or 5
 - (b) revoke a licence under section 82(b).
- (2) Monitor must give notice of its decision to the applicant or the licence holder (as the case may be).
- (3) A notice under this section must explain the right of appeal conferred by section 85. 10
- (4) A decision of Monitor to revoke a licence under section 82(b) takes effect on such day as may be specified by Monitor, being a day no earlier than –
 - (a) if an appeal is brought under section 85, the day on which the decision on the appeal is confirmed or the appeal is abandoned,
 - (b) where the licence holder notifies Monitor before the end of the period of 28 days mentioned in section 85 that the licence holder does not intend to appeal, the day on which Monitor receives the notification, or 15
 - (c) the day after the end of the period of 28 days so mentioned.

85 Appeals to the Tribunal

- (1) An appeal lies to the First-tier Tribunal against a decision of Monitor to –
 - (a) refuse an application for a licence under section 80, or 20
 - (b) revoke a licence under section 82(b).
- (2) The grounds for an appeal under this section are that the decision was –
 - (a) based on an error of fact,
 - (b) wrong in law, or 25
 - (c) unreasonable.
- (3) On an appeal under this section, the First-tier Tribunal may –
 - (a) confirm Monitor’s decision,
 - (b) direct that the decision is not to have effect, or
 - (c) remit the decision to Monitor. 30

86 Register of licence holders

- (1) Monitor must maintain and publish a register of licence holders.
- (2) The register may contain such information as Monitor considers appropriate for the purpose of keeping members of the public informed about licence holders including in particular information about the revocation of any licence under this Chapter. 35
- (3) Monitor must secure that copies of the register are available at its offices for inspection at all reasonable times by any person.
- (4) Any person who asks Monitor for a copy of, or an extract from, the register is entitled to have one. 40

- (5) Regulations may provide that subsections (3) and (4) do not apply –
 - (a) in such circumstances as may be prescribed, or
 - (b) to such parts of the register as may be prescribed.
- (6) A fee determined by Monitor is payable for the copy or extract except –
 - (a) in such circumstances as may be prescribed, or 5
 - (b) in any case where Monitor considers it appropriate to provide the copy or extract free of charge.

Licence conditions

87 Standard conditions

- (1) Monitor must determine and publish the conditions to be included in each licence under this Chapter (referred to in this Chapter as “the standard conditions”). 10
- (2) Different standard conditions may be determined for different descriptions of licences.
- (3) For the purposes of subsection (2) a description of licences may in particular be framed wholly or partly by reference to –
 - (a) the nature of the licence holder,
 - (b) the services provided under the licence, or
 - (c) the areas in which those services are provided. 15
- (4) But different standard conditions must not be determined for different descriptions of licences to the extent that the description is framed by reference to the nature of the licence holder unless Monitor considers that at least one of requirements 1 and 2 is met. 20
- (5) Requirement 1 is that –
 - (a) the standard conditions in question relate to the governance of licence holders, and
 - (b) it is necessary to determine different standard conditions in order to take account of differences in the status of different licence holders. 25
- (6) Requirement 2 is that it is necessary to determine different standard conditions for the purpose of ensuring that the burdens to which different licence holders are subject as a result of holding a licence are broadly consistent. 30
- (7) Before determining the first set of the standard conditions Monitor must consult the persons mentioned in subsection (8) on the conditions it is proposing to determine (“the draft standard conditions”).
- (8) Those persons are –
 - (a) the Secretary of State,
 - (b) the National Health Service Commissioning Board,
 - (c) every commissioning consortium,
 - (d) the Care Quality Commission and its Healthwatch England committee, 40
and
 - (e) such other persons as are likely to be affected by the inclusion of the conditions in licences under this Chapter as Monitor considers appropriate.

- (9) Monitor must also publish the draft standard conditions.
- (10) The Secretary of State may direct Monitor not to determine that the standard conditions will be the draft standard conditions.

88 Special conditions

- (1) Monitor may – 5
 - (a) with the consent of the applicant, include a special condition in a licence under this Chapter, and
 - (b) with the consent of the licence holder, modify a special condition of a licence.
- (2) Before including a special condition or making such modifications Monitor must give notice to – 10
 - (a) the applicant or the licence holder (as the case may be),
 - (b) the Secretary of State,
 - (c) the National Health Service Commissioning Board,
 - (d) such commissioning consortia as are likely to be affected by the proposed inclusion or modifications, and 15
 - (e) the Care Quality Commission and its Healthwatch England committee.
- (3) Monitor must also publish the notice under subsection (2).
- (4) The notice under subsection (2) must – 20
 - (a) state that Monitor proposes to include the special condition or make the modifications and set out its or their proposed effect,
 - (b) set out Monitor’s reasons for the proposal, and
 - (c) specify the period (“the notice period”) within which representations with respect to the proposal may be made to Monitor.
- (5) The notice period must be not less than 28 days beginning with the day after that on which the notice is published under subsection (3). 25
- (6) In this section, a reference to modifying a condition includes a reference to amending, omitting or adding a condition.

89 Limits on Monitor’s functions to set or modify licence conditions

- (1) This section applies to the following functions of Monitor – 30
 - (a) the duty to determine the standard conditions to be included in each licence under this Chapter or in licences of a particular description (see section 87),
 - (b) the powers to include a special condition in a licence and to modify such a condition (see section 88), 35
 - (c) the power to modify the standard conditions applicable to all licences, or to licences of a particular description (see section 91).
- (2) Monitor may only exercise a function to which this section applies – 40
 - (a) for the purpose of regulating the price payable for the provision of health care services for the purposes of the NHS;
 - (b) for the purpose of promoting competition in the provision of health care services for those purposes;

- (c) for the purpose of protecting and promoting the right of patients to make choices with respect to treatment or other health care services;
- (d) for the purpose of ensuring the continued provision of designated services;
- (e) for purposes connected with the governance or accountability of persons providing health care services for the purposes of the NHS; 5
- (f) for purposes connected with Monitor’s functions in relation to the register of NHS foundation trusts required to be maintained under section 39 of the National Health Service Act 2006;
- (g) for purposes connected with the operation of the licensing regime established by this Chapter; 10
- (h) for such purposes as may be prescribed for the purpose of enabling Monitor to discharge its duties under section 52.

90 Conditions: supplementary

- (1) The standard or special conditions of a licence under this Chapter may in particular include conditions – 15
 - (a) requiring the licence holder to pay to Monitor such fees of such amounts as Monitor may determine in respect of the exercise by Monitor of its functions under this Chapter,
 - (b) requiring the licence holder to comply with any requirement imposed on it by Monitor under Chapter 7 (financial assistance in health special administration cases), 20
 - (c) requiring the licence holder to do, or not to do, specified things (or to do, or not to do, specified things in a specified manner) in order to promote competition in the provision of health care services for the purposes of the NHS, 25
 - (d) requiring the licence holder to give notice to the Office of Fair Trading before entering into an arrangement under which, or transaction in consequence of which, the licence holder’s activities, and the activities of one or more other businesses, cease to be distinct activities, 30
 - (e) requiring the licence holder to provide Monitor with such information as Monitor considers necessary for the purposes of the exercise of its functions under this Part,
 - (f) requiring the licence holder to publish such information as may be specified or as Monitor may direct, 35
 - (g) requiring the licence holder to charge for the provision of health care services for the purposes of the NHS in accordance with the national tariff (see section 104),
 - (h) requiring the licence holder to comply with other rules published by Monitor about the charging for the provision of health care services for the purposes of the NHS, 40
 - (i) requiring the licence holder –
 - (i) to give Monitor notice (of such period as may be determined by or under the licence) of the licence holder’s intention to cease providing a designated service, and 45
 - (ii) if Monitor so directs, to continue providing that service for a period determined by Monitor,
 - (j) about the use or disposal by the licence holder of assets used in the provision of designated services, and

- (k) about the making by the licence holder of investment in relation to the provision of designated services.
- (2) In subsection (1) “specified” means specified in a condition.
- (3) Subsection (4) applies where Monitor includes a condition under subsection (1)(c) that requires the licence holder (A), when directed to do so by Monitor, to provide another licence holder (B) with access to a service which A uses in providing health care services for the purposes of the NHS. 5
- (4) In deciding whether to give a licence holder a direction in reliance on that condition, Monitor must have regard to –
 - (a) the practicability of B installing a comparable service, 10
 - (b) the practicability of A providing the proposed access,
 - (c) the investment that A has made in order to put itself in a position to use the service, and
 - (d) the need to secure effective long-term competition in the provision of health care services for the purposes of the NHS. 15
- (5) A condition under subsection (1)(d) –
 - (a) may be included only in the licence of an NHS foundation trust or a body which (or part of which) used to be an NHS trust established under section 25 of the National Health Service Act 2006, and
 - (b) ceases to have effect at the end of the period of five years beginning with the day on which it is included in the licence. 20
- (6) The references in subsection (1)(d) to the activities of a licence holder or other business include a reference to part of the activities concerned.
- (7) A condition of a licence under this Chapter may provide that it is to have effect, or cease to have effect, at such times and in such circumstances as may be determined by or under the conditions. 25

91 Modification of standard conditions

- (1) Monitor may, subject to the requirements of this section, modify the standard conditions applicable to all licences under this Chapter or to licences of a particular description. 30
- (2) Before making any such modifications Monitor must give notice to –
 - (a) each relevant licence holder,
 - (b) the Secretary of State,
 - (c) the National Health Service Commissioning Board,
 - (d) every commissioning consortium, and 35
 - (e) the Care Quality Commission and its Healthwatch England committee.
- (3) Monitor must also publish the notice under subsection (2).
- (4) The notice under subsection (2) must –
 - (a) state that Monitor proposes to make the modifications,
 - (b) set out the proposed effect of the modification, 40
 - (c) set out Monitor’s reasons for the proposal, and
 - (d) specify the period (“the notice period”) within which representations with respect to the proposal may be made to Monitor.

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- (5) The notice period must be not less than 28 days beginning with the day after that on which the notice is published under subsection (3).
- (6) Monitor may not under this section make any modifications unless—
- (a) no relevant licence holder has made an objection to Monitor about the proposal within the notice period, or 5
 - (b) subsection (7) applies to the case.
- (7) This subsection applies where—
- (a) one or more relevant licence holders make an objection to Monitor about the proposal within the notice period,
 - (b) the objection percentage is less than the percentage prescribed for the purposes of this paragraph, and 10
 - (c) the share of supply percentage is less than the percentage prescribed for the purposes of this paragraph.
- (8) In subsection (7) —
- (a) the “objection percentage” is the proportion (expressed as a percentage) of the relevant licence holders who objected to the proposals; 15
 - (b) the “share of supply percentage” is the proportion (expressed as a percentage) of the relevant licence holders who objected to the proposals, weighted according to their share of the supply in England of such services as may be prescribed. 20
- (9) Regulations prescribing a percentage for the purposes of subsection (7)(c) may include provision prescribing the method to be used for determining the licence holder’s share of the supply in England of the services concerned.
- (10) Where Monitor modifies the standard conditions applicable to all licences or (as the case may be) to licences of a particular description under this section, Monitor — 25
- (a) may also make such incidental or consequential modifications as it considers necessary or expedient of any other conditions of a licence which is affected by the modifications,
 - (b) must make (as nearly as may be) the same modifications of those conditions for the purposes of their inclusion in licences granted after that time, and 30
 - (c) must publish the modifications.
- (11) In this section and section 92, “relevant licence holder” — 35
- (a) in relation to proposed modifications of the standard conditions applicable to all licences, means any licence holder, and
 - (b) in relation to proposed modifications of the standard conditions applicable to licences of a particular description, means a holder of a licence of that description.
- (12) In this section, a reference to modifying a condition includes a reference to amending, omitting or adding a condition. 40

92 Modification references to the Competition Commission

- (1) Subsection (2) applies where —
- (a) Monitor has given notice under section 88(2) of a proposal to include a special condition in a licence or modify such a condition, and 45

- (b) the applicant or (as the case may be) licence holder concerned has refused consent to the inclusion of the condition or the making of the modifications.
- (2) Monitor may make a reference to the Competition Commission which is so framed as to require the Commission to investigate and report on the questions – 5
 - (a) whether any matters which relate to the provision, or proposed provision, of a health care service for the purposes of the NHS by the applicant or (as the case may be) licence holder concerned and which are specified in the reference, operate, or may be expected to operate, against the public interest, and 10
 - (b) if so, whether the effects adverse to the public interest which those matters have or may be expected to have could be remedied or prevented by the inclusion of a special condition in the applicant’s licence or by modifications of a special condition of the licence holder’s licence. 15
- (3) Subsection (4) applies where –
 - (a) Monitor has given notice under section 91(2) of a proposal to make modifications to the standard conditions applicable to all licences under this Chapter, or to licences of a particular description, and 20
 - (b) section 91 operates to prevent Monitor from making the modifications.
- (4) Monitor may make a reference to the Competition Commission which is so framed as to require the Commission to investigate and report on the questions –
 - (a) whether any matters which relate to the provision of health care services for the purposes of the NHS by the relevant licence holders, and which are specified in the reference, operate, or may be expected to operate, against the public interest, and 25
 - (b) if so, whether the effects adverse to the public interest which those matters have or may be expected to have could be remedied or prevented by modifications of the standard conditions applicable to all licences under this Chapter, or to licences of a particular description. 30
- (5) Schedule 8 (which makes further provision about references to the Competition Commission) has effect in relation to a reference under subsection (2) or (4); and, for that purpose, the relevant persons are – 35
 - (a) in paragraphs 3, 6(6) and 7(6) –
 - (i) the applicant or (as the case may be) relevant licence holders,
 - (ii) the National Health Service Commissioning Board, and
 - (iii) such commissioning consortia as are likely to be affected by matters to which the reference relates, 40
 - (b) in paragraph 5(6), the applicant or (as the case may be) relevant licence holders, and
 - (c) in paragraph 8(10) –
 - (i) the applicant or (as the case may be) relevant licence holders,
 - (ii) Monitor, 45
 - (iii) the National Health Service Commissioning Board, and
 - (iv) such commissioning consortia as are likely to be affected by the proposal concerned.

- (6) In investigating the question under subsection (2)(a) or (4)(a) the Competition Commission must have regard to –
- (a) the matters in respect of which Monitor has duties under section 52, and
 - (b) the matters to which Monitor must have regard by virtue of section 54. 5
- (7) The modification pursuant to a reference made under subsection (2) of part of a standard condition of a licence does not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Chapter.
- (8) In this section, a reference to modifying a condition includes a reference to amending, omitting or adding a condition. 10

93 Modification of conditions by order under other enactments

- (1) This section applies where the Office of Fair Trading, Competition Commission or Secretary of State (the “relevant authority”) makes a relevant order. 15
- (2) The relevant order may modify –
- (a) the conditions of a particular licence, or
 - (b) the standard conditions applicable to all licences under this Chapter or to licences of a particular description.
- (3) The modifications which may be made by a relevant order are those which the relevant authority considers necessary or expedient for the purpose of giving effect to, or taking account of, any provision made by the order. 20
- (4) In this section “relevant order” means –
- (a) an order under section 75, 83 or 84 of, or paragraph 5, 10 or 11 of Schedule 7 to, the Enterprise Act 2002 where one or more of the enterprises which have, or may have, ceased to be distinct enterprises were engaged in the provision of health care services for the purposes of the NHS; 25
 - (b) an order under any of those provisions of that Act where one or more of the enterprises which will or may cease to be distinct enterprises is engaged in the provision of health care services for the purposes of the NHS; 30
 - (c) an order under section 160 or 161 of that Act where the feature, or combination of features, of the market in the United Kingdom for goods or services which prevents, restricts or distorts competition relates to – 35
 - (i) the commissioning by the National Health Service Commissioning Board or a commissioning consortium of health care services for the purposes of the NHS, or
 - (ii) the provision of those services. 40
- (5) The modification under subsection (2)(a) of part of a standard condition of a licence does not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Chapter.
- (6) Where the relevant authority modifies the standard conditions applicable to all licences or (as the case may be) to licences of a particular description under this section, the relevant authority – 45

- (a) may, after consultation with Monitor, make such incidental or consequential modifications as the relevant authority considers necessary or expedient of any other conditions of any licence which is affected by the modifications,
 - (b) must also make (as nearly as may be) the same modifications of those conditions for the purposes of their inclusion in licences granted after that time, and
 - (c) must publish any modifications it makes under paragraph (b).
- (7) Expressions used in subsection (4) and in Part 3 or (as the case may be) Part 4 of the Enterprise Act 2002 have the same meaning in that subsection as in that Part. 10
- (8) A reference in this section to modifying a condition includes a reference to amending, omitting or adding a condition.

Enforcement

94 Power to require documents and information 15

- (1) Monitor may require a person mentioned in subsection (2) to provide it with any information, documents, records or other items which it considers it necessary or expedient to have for the purposes of any of its regulatory functions.
- (2) The persons are – 20
 - (a) an applicant for a licence under this Chapter,
 - (b) a licence holder,
 - (c) a person who has provided, or is providing, a health care service for the purposes of the NHS in accordance with an exemption by virtue of section 76 from the requirement to hold a licence under this Chapter, 25
 - (d) a person who has provided, or is providing, a health care service for the purposes of the NHS in breach of that requirement,
 - (e) the National Health Service Commissioning Board, and
 - (f) a commissioning consortium.
- (3) The power in subsection (1) includes, in relation to information, documents or records kept by means of a computer, power to require the provision of the information, documents or records in legible form. 30
- (4) For the purposes of subsection (1) Monitor’s regulatory functions are its functions under – 35
 - (a) this Chapter,
 - (b) Chapter 3 and Chapters 5 to 7, and
 - (c) Chapter 5 of Part 2 of the National Health Service Act 2006 (NHS foundation trusts).

95 Discretionary requirements

- (1) Monitor may impose one or more discretionary requirements on a person if Monitor is satisfied that the person – 40
 - (a) has provided, or is providing, a health care service for the purposes of the NHS in breach of the requirement to hold a licence under this Chapter (see section 74),

- (b) is a licence holder who has provided, or is providing, a health care service for the purposes of the NHS in breach of a condition of the licence, or
 - (c) is in breach of a requirement imposed by Monitor under section 94.
- (2) In this Chapter, “discretionary requirement” means – 5
- (a) a requirement to pay a monetary penalty to Monitor of such amount as Monitor may determine (referred to in this Chapter as a “variable monetary penalty”),
 - (b) a requirement to take such steps within such period as Monitor may specify, to secure that the breach in question does not continue or recur (referred to in this Chapter as a “compliance requirement”), or 10
 - (c) a requirement to take such steps within such period as Monitor may specify, to secure that the position is, so far as possible, restored to what it would have been if the breach in question was not occurring or had not occurred (referred to in this Chapter as a “restoration requirement”). 15
- (3) Monitor must not impose discretionary requirements on a person on more than one occasion in relation to the same breach.
- (4) A variable monetary penalty must not exceed 10% of the turnover in England of the person on whom it is imposed, such amount to be calculated in the prescribed manner. 20
- (5) If the whole or any part of a variable monetary penalty is not paid by the time it is required to be paid, the unpaid balance from time to time carries interest at the rate for the time being specified in section 17 of the Judgments Act 1838; but the total interest must not exceed the amount of the penalty. 25

96 Enforcement undertakings

- (1) Monitor may accept an enforcement undertaking from a person if Monitor has reasonable grounds to suspect that the person –
- (a) has provided, or is providing, a health care service for the purposes of the NHS in breach of the requirement to hold a licence under this Part, 30
 - (b) is a licence holder who has provided, or is providing, a health care service for the purposes of the NHS in breach of a condition of the licence, or
 - (c) is in breach of a requirement imposed by Monitor under section 94.
- (2) In this Chapter, “enforcement undertaking” means an undertaking from a person to take such action of a kind mentioned in subsection (3) as may be specified in the undertaking within such period as may be so specified. 35
- (3) The specified action must be –
- (a) action to secure that the breach in question does not continue or recur,
 - (b) action to secure that the position is, so far as possible, restored to what it would have been if the breach in question was not occurring or had not occurred, 40
 - (c) action (including the payment of a sum of money) to benefit –
 - (i) any other licence holder affected by the breach, or
 - (ii) any commissioner of health care services for the purposes of the NHS which is affected by the breach, or 45
 - (d) action of such a description as may be prescribed.

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- (4) Where Monitor accepts an enforcement undertaking then, unless the person from whom the undertaking is accepted has failed to comply with the undertaking or any part of it—
- (a) Monitor may not impose on that person any discretionary requirement which it would otherwise have power to impose by virtue of section 95 in respect of the breach to which the undertaking relates, and 5
 - (b) if the breach to which the undertaking relates falls within subsection (1)(b), Monitor may not revoke that person’s licence under section 82(b).
- (5) Where a person from whom Monitor has accepted an enforcement undertaking has failed to comply fully with the undertaking but has complied with part of it, Monitor must take the partial compliance into account in deciding whether—
- (a) to impose a discretionary requirement on the person in respect of the breach to which the undertaking relates, or 15
 - (b) if the breach to which the undertaking relates falls within subsection (1)(b), to revoke the person’s licence under section 82(b).
- 97 Further provision about enforcement powers**
- Schedule 9 (Part 1 of which makes further provision about discretionary requirements and Part 2 of which makes further provision about enforcement undertakings) has effect. 20
- 98 Guidance as to use of enforcement powers**
- (1) Monitor must publish guidance about how it intends to exercise its functions under sections 95 and 96 and Schedule 9.
- (2) Monitor may revise the guidance and, if it does so, must publish the guidance as revised. 25
- (3) Monitor must consult such persons as it considers appropriate before publishing or revising the guidance.
- (4) Guidance relating to Monitor’s functions under section 95 must include information about—
- (a) the circumstances in which Monitor is likely to impose a discretionary requirement,
 - (b) the circumstances in which Monitor may not impose a discretionary requirement,
 - (c) the matters likely to be taken into account by Monitor in determining the amount of any variable monetary penalty to be imposed (including, where relevant, any discounts for voluntary reporting of breaches in respect of which a penalty may be imposed), and 35
 - (d) rights to make representations and rights of appeal.
- (5) Monitor must have regard to the guidance or (as the case may be) revised guidance in exercising its functions under sections 95 and 96 and Schedule 9. 40
- 99 Publication of enforcement action**
- (1) Monitor must include information about the following in its annual report—

-
- (a) the cases in which a discretionary requirement has been imposed during the financial year to which the report relates, and
- (b) the cases in which an enforcement undertaking has been accepted during that financial year.
- (2) But Monitor must not include commercial information which it is satisfied would or might significantly harm the legitimate business interests of the licence holder to whom it relates. 5
- (3) The reference in subsection (1)(a) to cases in which a discretionary requirement has been imposed does not include a reference to a case where a discretionary requirement has been imposed but overturned on appeal. 10
- 100 Notification of enforcement action**
- (1) As soon as reasonably practicable after imposing a discretionary requirement or accepting an enforcement undertaking Monitor must notify the following of that fact –
- (a) the National Health Service Commissioning Board, 15
- (b) such commissioning consortia as are likely to be affected by the imposition of the requirement or the acceptance of the undertaking, and
- (c) any person exercising regulatory functions in relation to the person on whom the discretionary requirement was imposed or from whom the enforcement undertaking was accepted. 20
- (2) In subsection (1) “regulatory functions” has the same meaning as in the Legislative and Regulatory Reform Act 2006 (see section 32 of that Act).
- Transitional provision*
- 101 Designation of NHS foundation trusts during transitional period** 25
- (1) Monitor may designate an NHS foundation trust for the purposes of this section and section 102 if it is satisfied that the trust meets such criteria as are set and published by Monitor.
- (2) Before publishing criteria under subsection (1), Monitor must consult –
- (a) the Secretary of State, 30
- (b) the Care Quality Commission, and
- (c) such other persons as Monitor considers are likely to be affected by a designation under this section.
- (3) A designation under this section of a trust authorised before the day on which this Chapter comes into force (“the licensing commencement day”) does not have effect unless –
- (a) Monitor gives notice of the designation to the Secretary of State, and
- (b) before the end of the period of 28 days beginning with the day after that on which the Secretary of State receives the notice, the Secretary of State approves the designation. 40
- (4) A trust authorised before the licensing commencement day may not be designated under this section after that day; but approval under subsection (3)(b) may be given after that day.

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- (5) A designation under this section of a trust authorised before the licensing commencement day expires at the end of the period of two years beginning with that day.
- (6) A designation under this section of a trust authorised on or after the licensing commencement day takes effect when the designation is given. 5
- (7) A trust authorised on or after the licensing commencement day may not be designated under this section other than at the time when the trust is authorised.
- (8) A designation under this section of a trust authorised on or after the licensing commencement day expires at the end of the period of two years beginning with the day on which the designation is given. 10
- (9) Where Monitor is satisfied that a trust in respect of which a designation under this section has effect does not meet the criteria for the time being published under subsection (1), it may remove the designation from the trust.
- (10) The Secretary of State may by order provide that subsections (5) and (8) are to have effect with the substitution of a longer period for the period specified there (whether originally or by virtue of a previous order). 15
- (11) In this section, a reference to being authorised is a reference to being given an authorisation under section 35 of the National Health Service Act 2006.
- 102 Imposition of licence conditions on designated NHS foundation trusts 20**
- (1) This section applies in relation to an NHS foundation trust in respect of which a designation under section 101 has effect.
- (2) Where Monitor is satisfied that there is a significant risk that the trust will fail to fulfil its principal purpose (as to which, see section 43(1) of the National Health Service Act 2006), Monitor may include in the trust’s licence such conditions as it considers appropriate for the purpose of reducing that risk. 25
- (3) A condition included under subsection (2) has effect until the designation expires.
- (4) Monitor may modify a condition included under subsection (2).
- (5) Where Monitor is satisfied that the trust has breached or is breaching a condition included under subsection (2), Monitor may by notice— 30
- (a) require the trust, the directors or the council of governors to do, or not to do, specified things or things of a specified description within a specified period;
- (b) remove one or more of the directors or members of the council of governors and appoint interim directors or members of the council; 35
- (c) suspend one or more of the directors or members of the council from office as a director or member for a specified period;
- (d) disqualify one or more of the directors or members of the council from holding office as a director or member for a specified period. 40
- (6) Where Monitor is satisfied that the trust has breached or is breaching a requirement imposed under subsection (5), or has otherwise failed or is otherwise failing to comply with a notice under that subsection, Monitor may by notice exercise one or more of the powers specified in paragraphs (a) to (d) of that subsection. 45

- (7) A power under subsection (5) (including as it applies by virtue of subsection (6)) may be exercised only while the designation has effect.
- (8) Subsection (5) does not prevent Monitor from exercising the powers conferred by sections 95 and 96 (discretionary requirements and enforcement undertakings) in relation to conditions included under subsection (2). 5
- (9) Where Monitor includes a condition under subsection (2), it may also make such incidental or consequential modifications as it considers necessary or expedient of any other condition of the licence concerned which is affected.
- (10) Where Monitor includes a condition under subsection (2) by modifying a standard condition of the licence concerned, the modification does not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Chapter. 10
- (11) A reference in this section to failing to discharge functions includes a reference to failing to discharge those functions properly.
- (12) Omit section 52 of the National Health Service Act 2006 (failing NHS foundation trusts); and in consequence of that, omit – 15
- (a) section 39(1)(f) of that Act (copy of notice under section 52 of that Act to be on register), and
 - (b) paragraph 22(1)(f) of Schedule 7 to that Act (copy of that notice to be available for public inspection). 20

CHAPTER 5

PRICING

103 Price payable by commissioners for NHS services

- (1) If a health care service is specified in the national tariff (as to which, see section 104), the price payable for the provision of that service for the purposes of the NHS is – 25
- (a) the price specified in the national tariff for that service, or
 - (b) where the national tariff specifies a maximum price for that service, such price not exceeding that maximum as the commissioner and the provider may agree. 30
- (2) If a health care service is not specified in the national tariff, the price payable for the provision of that service for the purposes of the NHS is such price as is determined in accordance with the rules provided for in the national tariff for that purpose.

104 The national tariff

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- (1) Monitor must publish a document, to be known as “the national tariff”, which –
- (a) specifies certain health care services which are or may be provided for the purposes of the NHS,
 - (b) specifies the method used for determining prices, or maximum prices, for the provision of those services for those purposes, 40
 - (c) specifies the price, or maximum price, payable for the provision of each of those services for those purposes, and

- (d) provides rules for determining the price payable for the provision for those purposes of health care services which are not specified under subsection (1)(a).
- (2) The national tariff must also provide for rules under which the commissioner of a health care service specified in the national tariff and the providers of that service may agree to vary –
 - (a) the specification of the service under subsection (1)(a), or
 - (b) the price or maximum price specified under subsection (1)(c).5
- (3) The national tariff must include guidance as to the application of rules provided for under subsections (1)(d) and (2). 10
- (4) A health care service specified in the national tariff may comprise two or more services which together constitute a form of treatment.
- (5) Different methods may be specified under subsection (1)(b) for different descriptions of health care service.
- (6) The national tariff may, in the case of a specified health care service or health care services of a specified description, specify different prices or different maximum prices –
 - (a) according to whether the service has been designated under section 69;
 - (b) in relation to different descriptions of provider.15
- (7) The national tariff may not specify a price, or a maximum price, for the provision of a health care service pursuant to the functions of the Secretary of State or a local authority under section 2A or 2B of, or Schedule 1 to, the National Health Service Act 2006 (public health services). 20
- (8) The national tariff has effect for such period as is specified in the national tariff (or, where a new edition of the national tariff takes effect before the end of that period, until that new edition takes effect). 25
- (9) In exercising its functions under this Chapter, Monitor must (in addition to the matters specified in section 54) have regard to the objectives and requirements for the time being specified in the mandate published under section 13A of the National Health Service Act 2006. 30

105 Consultation on proposals for the national tariff

- (1) Before publishing the national tariff, Monitor must send a notice to –
 - (a) each commissioning consortium,
 - (b) each licence holder, and
 - (c) such other persons as it considers appropriate.35
- (2) Monitor must also publish the notice.
- (3) The notice must specify –
 - (a) the health care services which Monitor proposes to specify in the national tariff,
 - (b) the method or methods it proposes to use for determining prices, or maximum prices, payable for the provision of those services, 40
 - (c) the price or maximum price for each of those services that is determined by using the applicable method, and

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- (d) the rules for which Monitor proposes to provide for determining the price payable for the provision for the purposes of the NHS of health care services not specified under subsection (3)(a).
- (4) The notice must also specify the rules for which Monitor proposes to provide in the national tariff under which the commissioner of a health care service and a provider of the service would be entitled to vary – 5
- (a) the specification of the service in the national tariff, or
- (b) the price or maximum price specified in the national tariff.
- (5) The health care services specified for the purposes of subsection (3)(a) are only such services as the National Health Service Commissioning Board considers should be so specified and – 10
- (a) as the Board and Monitor agree will be so specified, or
- (b) in default of agreement, as are determined by arbitration as being services that will be so specified.
- (6) The method specified for the purposes of subsection (3)(b) is only such method as Monitor considers should be so specified and – 15
- (a) as Monitor and the Board agree will be so specified, or
- (b) in default of agreement, as is determined by arbitration as being the method that will be so specified.
- (7) The prices, or maximum prices, specified for the purposes of subsection (3)(c) are only such prices or maximum prices as Monitor considers should be so specified and – 20
- (a) as Monitor and the Board agree will be so specified, or
- (b) in default of agreement, as are determined by arbitration as being the prices or maximum prices that will be so specified. 25
- (8) The rules specified for the purposes of subsection (3)(d) are only such rules as Monitor considers should be so specified and –
- (a) as Monitor and the Board agree will be so specified, or
- (b) in default of agreement, as are determined by arbitration as being the rules that will be so specified. 30
- (9) The rules specified for the purposes of subsection (4) are only such rules as the National Health Service Commissioning Board considers should be so specified and –
- (a) as the Board and Monitor agree will be so specified, or
- (b) in default of agreement, as are determined by arbitration as being the rules that will be so specified. 35
- (10) A notice under this section must specify when the consultation period in relation to the proposals ends; and for that purpose, the consultation period is the period of 28 days beginning with the day after that on which the notice is published under subsection (2). 40
- (11) For the purposes of subsection (1) in its application to the first performance of the duty under that subsection, the reference to licence holders is to be read as a reference to such persons as are at that time providing health care services for the purposes of the NHS.

106 Responses to consultation

- (1) If Monitor receives objections from one or more commissioning consortia or licence holders to a method it proposes under section 105(3)(b), Monitor may not publish the national tariff unless –
 - (a) the conditions in subsection (2) are met, or 5
 - (b) where those conditions are not met, Monitor has made a reference to the Competition Commission.
- (2) The conditions referred to in subsection (1)(a) are –
 - (a) the objection percentage for commissioning consortia is less than the prescribed percentage, 10
 - (b) the objection percentage for licence holders is less than the prescribed percentage, and
 - (c) the share of supply percentage is less than such percentage as may be prescribed.
- (3) In subsection (2) –
 - (a) the “objection percentage” is the proportion (expressed as a percentage) of commissioning consortia or (as the case may be) licence holders who objected to the proposed method, and 15
 - (b) the “share of supply percentage” is the proportion (expressed as a percentage) of licence holders who objected to the proposed method, weighted according to their share of the supply in England of such services as may be prescribed. 20
- (4) A reference under subsection (1)(b) must require the Competition Commission to determine whether the method proposed under section 105(3)(b) is appropriate. 25
- (5) The functions of the Competition Commission with respect to a reference under this section are not to be regarded as general functions of its for the purposes of Part 2 of Schedule 7 to the Competition Act 1998; instead, Schedule 10 (procedure on a reference under this section) has effect.
- (6) Regulations prescribing a percentage for the purposes of subsection (2)(c) may include provision prescribing the method used for determining a licence holder’s share of the supply in England of the services concerned. 30
- (7) Where subsection (10) of section 105 applies, references in this section to licence holders are to be construed in accordance with that subsection.

107 Determination on reference under section 106

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- (1) In carrying out a determination on a reference under section 106, the Competition Commission must have regard, to the same extent as is required of Monitor, to the matters to which Monitor must have regard in carrying out the functions of its to which the determination relates.
- (2) In carrying out the determination, the Competition Commission must also have regard to such representations as are made to it by licence holders who made objections to Monitor in accordance with paragraph 2 of Schedule 10 about the method proposed under section 104(1)(b). 40
- (3) In carrying out the determination, the Competition Commission –
 - (a) may also have regard to matters to which Monitor was not able to have regard in the case to which the determination relates, but 45

- (b) must not, in the exercise of the power under paragraph (a), have regard to a matter to which Monitor would not have been entitled to have regard in that case had it had the opportunity to do so.
- (4) The Commission may determine that the method proposed under section 104(1)(b) is not appropriate only if it is satisfied that Monitor’s decision to propose the method was wrong on one or more of the following grounds – 5
- (a) that Monitor failed to have regard to the matters referred to in subsection (1),
- (b) that the decision was based, wholly or partly, on an error of fact,
- (c) that the decision was wrong in law. 10
- (5) Where the Commission determines that the method proposed under section 104(1)(b) is appropriate, Monitor may use that method for the purposes of the national tariff accordingly.
- (6) Where the Commission determines that the method proposed under section 104(1)(b) is not appropriate, it must remit the matter to Monitor for reconsideration and decision in accordance with such directions as the Commission may give. 15
- (7) A direction under subsection (6) may, in particular, require Monitor to make such changes to the method in question as are specified in the direction.
- (8) A determination on a reference under section 106 – 20
- (a) must be contained in an order made by the Commission,
- (b) must set out the reasons for the determination, and
- (c) takes effect at the time specified in the order or determined in accordance with provision made in the order.
- (9) The Commission must give notice of a determination on a reference under section 106 to – 25
- (a) Monitor,
- (b) the National Health Service Commissioning Board, and
- (c) such licence holders as made representations in accordance with paragraph 2 of Schedule 10. 30
- (10) The Commission must also publish the determination; but it must exclude from what it publishes information which it is satisfied is –
- (a) commercial information the disclosure of which would, or might, significantly harm the legitimate business interests of an undertaking to which it relates; 35
- (b) information relating to the private affairs of an individual the disclosure of which would, or might, significantly harm that person’s interests.

108 Changes following determination on reference under section 106

- (1) Where the Competition Commission remits a matter to Monitor under subsection (6) of section 107, Monitor must make such changes to the method to which the matter relates as it considers necessary, having regard to the reasons specified for the purposes of subsection (8)(b) of that section. 40
- (2) Monitor must give the Competition Commission and the National Health Service Commissioning Board a notice specifying – 45
- (a) the changes it proposes to make, and

- (b) its reasons for proposing to make them.
- (3) Monitor must make the changes specified in the notice unless it is given a direction under section 109 before the end of the period of 28 days beginning with the day on which it gave the notice.
- (4) If Monitor is given a direction under that section before the end of that period, it must make such of the changes as are not specified in the direction. 5

109 Power to veto changes proposed under section 108

- (1) The Competition Commission may, within the period of 28 days beginning with the day on which it is given a notice under section 108, direct Monitor –
 - (a) not to make the changes specified in the notice, or 10
 - (b) not to make such of those changes as may be specified in the direction.
- (2) Monitor must comply with a direction under this section.
- (3) The Secretary of State may, within that period and on the application of the Commission, direct that the period for giving a direction under this section (and, accordingly, the period referred to in section 108(3)) is to be extended by 14 days. 15
- (4) The Competition Commission may give a direction under this section only in respect of such of the changes specified in the notice under section 108 as it considers are necessary in consequence of its determination on the reference.
- (5) If the Commission gives a direction under this section, it –
 - (a) must give notice specifying the changes proposed by Monitor, the terms of the direction and the reasons for giving it, and 20
 - (b) must itself make such changes to the method to which the reference relates as it considers necessary in consequence of its determination on the reference. 25
- (6) In exercising its function under subsection (5)(b), the Commission must have regard to the matters to which Monitor must have regard when determining the method to which the reference relates.
- (7) Before making changes under subsection (5)(b), the Commission must give notice to Monitor and the National Health Service Commissioning Board specifying –
 - (a) the changes it proposes to make,
 - (b) its reasons for proposing to make them, and
 - (c) the period within which representations on the proposed changes may be made. 30
- (8) The period specified for the purposes of subsection (7)(c) must not be less than 28 days beginning with the day on which the notice is given. 35

110 Local modifications of prices of designated services: agreements

- (1) In the case of a designated service, the commissioner and the provider may agree that the price payable to the provider for the provision of the service in such circumstances or areas as may be specified in the agreement is –
 - (a) the price specified in the national tariff for that service as modified in accordance with the agreement, or 40

- (b) where the national tariff specifies a maximum price for that service, a price not exceeding that maximum as modified in accordance with the agreement.
- (2) An agreement under this section must specify the date on which the modification is to take effect; and a date specified for that purpose may be earlier than the date of the agreement (but not earlier than the date on which the national tariff took effect). 5
- (3) An agreement under this section has effect only if it is approved by Monitor.
- (4) An agreement submitted for approval under subsection (3) must be supported by such evidence as Monitor may require. 10
- (5) Monitor may approve an agreement under this section only if it is satisfied that, without a modification to the price or maximum price specified for the service in the national tariff, it would be uneconomic for the provider to provide the service for the purposes of the NHS.
- (6) Where an agreement is approved under subsection (3), Monitor must send a notice to such commissioning consortia, providers and other persons as it considers appropriate. 15
- (7) Monitor must also publish the notice.
- (8) The notice must specify – 20
- (a) the modification, and
- (b) the date on which it takes effect.
- (9) Monitor may publish guidance on the modification of prices under this section.
- (10) In making an agreement under this section, the commissioner and provider of a designated service must have regard to guidance under subsection (9).
- (11) In deciding whether to approve an agreement under this section, Monitor must have regard to guidance under subsection (9). 25

111 Local modifications of prices of designated services: applications

- (1) Monitor may, on an application by a provider of a designated service who has failed to reach an agreement under section 110 with the commissioner, decide that the price payable to the provider for the provision of the service in such circumstances or areas as Monitor may determine is to be – 30
- (a) the price specified in the national tariff for that service as modified in such way as Monitor may determine, or
- (b) where the national tariff specifies a maximum price for that service, a price not exceeding that maximum as modified in such way as Monitor may determine. 35
- (2) An application under this section must be supported by such evidence as Monitor may require.
- (3) Monitor may grant an application under this section only if it is satisfied that, without a modification to the price or maximum price specified for the service in the national tariff, it would be uneconomic for the provider to provide the service for the purposes of the NHS. 40
- (4) Subsections (5) to (9) apply where Monitor grants an application under this section.

- (5) The decision by Monitor on the application takes effect on such date as Monitor may determine; and a date determined for that purpose may be earlier than the date of the decision (but not earlier than the date on which the national tariff took effect).
 - (6) Monitor must send a notice of the decision to such commissioning consortia, providers and other persons as it considers appropriate. 5
 - (7) Monitor must also publish the notice.
 - (8) The notice must specify –
 - (a) the modification, and
 - (b) the date on which it takes effect. 10
 - (9) The power to make an application under section 71(3) for the removal of the designation in question is (as well as being exercisable by the commissioner of the service in question) exercisable by the National Health Service Commissioning Board where it is not the commissioner of the service.
 - (10) Monitor may publish guidance on the modification of prices under this section. 15
 - (11) In making an application under this section, a provider of a designated service must have regard to guidance under subsection (10).
 - (12) In deciding whether to grant an application under this section, Monitor must have regard to guidance under subsection (10).
- 112 Correction of mistakes** 20
- (1) This section applies where the national tariff contains information that does not accord with –
 - (a) what Monitor and the National Health Service Commissioning Board agreed on the matter concerned, or
 - (b) where the matter was determined by arbitration, what was determined. 25
 - (2) Monitor must send a notice to –
 - (a) each commissioning consortium,
 - (b) each licence holder, and
 - (c) such other persons as Monitor considers appropriate.
 - (3) Monitor must also publish the notice. 30
 - (4) The notice must specify –
 - (a) the information that does not accord with what was agreed or determined,
 - (b) the correction required to make the information so accord, and
 - (c) the date on which the correction is to take effect. 35
 - (5) A date specified for the purposes of subsection (4)(c) may be earlier than the date of the notice.

CHAPTER 6

INSOLVENCY AND HEALTH SPECIAL ADMINISTRATION

113 Application of insolvency law to NHS foundation trusts

- (1) Omit sections 53 to 55 of the National Health Service Act 2006 (voluntary arrangements and dissolution). 5
- (2) Before section 56 of that Act and the preceding cross-heading (accordingly, under the cross-heading “Failure”) insert –

“55A Application of insolvency law etc.

 - (1) Regulations must provide for provisions of the Insolvency Act 1986 mentioned in subsection (2), and related provisions of that Act or of rules under section 411 of that Act, to apply (with or without modifications) to NHS foundation trusts. 10
 - (2) The provisions of the Insolvency Act 1986 referred to in subsection (1) are –
 - (a) Part 1 (company voluntary arrangements), 15
 - (b) Part 2 (administration),
 - (c) Part 4 (winding-up of companies), and
 - (d) Part 6 (miscellaneous provision about company insolvency).
 - (3) The power to make rules under section 411 of that Act applies for the purpose of giving effect to provision made by virtue of this section as it applies for the purpose of giving effect to Parts 1, 2, 4, 6 and 7 of that Act. 20
 - (4) For that purpose –
 - (a) the power to make rules is exercisable by the Lord Chancellor with the concurrence of the Secretary of State and, in the case of rules that affect court procedure, with the concurrence of the Lord Chief Justice; 25
 - (b) references in section 411 of that Act to those Parts are to be read as including a reference to such of those Parts as are applied by virtue of this section. 30
 - (5) Regulations under this section must also provide for provisions of Part 26 of the Companies Act 2006 (arrangements and reconstructions), or any related provision of that Act, to apply (with or without modifications) to NHS foundation trusts.
 - (6) Before making regulations under this section, the Secretary of State must consult –
 - (a) Monitor, and
 - (b) such other persons as the Secretary of State considers appropriate.” 35
- (3) In section 272 of that Act (orders, regulations, rules etc.), in subsection (6), after paragraph (za) insert –

“(zb) regulations under section 55A.”. 40
- (4) In Schedule 9 to that Act (NHS foundation trusts: transfer of staff), in paragraph 1, omit “to which section 53 applies”.

- (5) In consequence of the repeals made by subsections (1) and (4), omit section 18(2) to (6) and (11) of the Health Act 2009.

114 Health special administration orders

- (1) In this Chapter “health special administration order” means an order which—
- (a) is made by the court in relation to a relevant provider, and 5
 - (b) directs that the affairs, business and property of the provider are to be managed by one or more persons appointed by the court.
- (2) An application to the court for a health special administration order may be made only by Monitor.
- (3) A person appointed as mentioned in subsection (1)(b) is referred to in this Chapter as a “health special administrator”. 10
- (4) A health special administrator of a relevant provider must manage its affairs, business and property, and exercise the health special administrator’s functions, so as to—
- (a) achieve the objective set out in section 115 as quickly and as efficiently as is reasonably practicable, 15
 - (b) in seeking to achieve that objective, ensure that any regulated activity carried on in providing the designated services provided by the provider is carried on in accordance with any requirements or conditions imposed by virtue of Chapter 2 of Part 1 of the Health and Social Care Act 2008, 20
 - (c) so far as is consistent with the objective set out in section 115, protect the interests of the creditors of the provider as a whole, and
 - (d) in the case of a provider which is a company, so far as is consistent with that objective and subject to those interests, protect the interests of the members of the company as a whole. 25
- (5) In relation to a health special administration order applying to a non-GB company, references in this Chapter to the affairs, business and property of the company are references only to its affairs and business so far as carried on in Great Britain and to its property in Great Britain. 30
- (6) In this section “regulated activity” has the same meaning as in Part 1 of the Health and Social Care Act 2008 (see section 8 of that Act).
- (7) In this Chapter—
- “business” and “property” each have the same meaning as in the Insolvency Act 1986 (see section 436 of that Act); 35
 - “company” includes a company not registered under the Companies Act 2006;
 - “court”—
 - (a) in relation to an NHS foundation trust, means the High Court;
 - (b) in relation to a company, means the court— 40
 - (i) having jurisdiction to wind up the company, or
 - (ii) that would have such jurisdiction apart from section 221(2) or 441(2) of the Insolvency Act 1986 (exclusion of winding up jurisdiction in case of companies incorporated in, or having principal place of business in, Northern Ireland); 45

“member”, in relation to a company, is to be read in accordance with section 250 of the Insolvency Act 1986;

“non-GB company” means a company incorporated outside Great Britain;

“relevant provider” means an NHS foundation trust, or a company, which is providing designated services;

“wholly-owned subsidiary” has the meaning given by section 1159 of the Companies Act 2006.

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115 Objective of a health special administration

- (1) The objective of a health special administration is to secure—
- (a) the continued provision of the designated services provided by the NHS foundation trust or company subject to the health special administration order, and
 - (b) that it becomes unnecessary, by one or both of the means set out in subsection (2), for the health special administration order to remain in force for that purpose.
- (2) Those means are—
- (a) the rescue as a going concern of the NHS foundation trust or company subject to the health special administration order, and
 - (b) one or more transfers falling within subsection (3).
- (3) A transfer falls within this subsection if it is a transfer as a going concern—
- (a) to another licence holder, or
 - (b) as respects different parts of the undertaking of the NHS foundation trust or company subject to the health special administration order, to two or more other licence holders,
- of so much of that undertaking as it is appropriate to transfer for the purpose of achieving the objective of the health special administration.
- (4) The means by which a transfer falling within subsection (3) may be effected in the case of a company include in particular—
- (a) a transfer of the undertaking of the company subject to the health special administration order, or of part of its undertaking, to a wholly-owned subsidiary of that company, and
 - (b) a transfer to a company of securities of a wholly-owned subsidiary to which there has been a transfer falling within paragraph (a).
- (5) The objective of a health special administration may be achieved by transfers to the extent only that—
- (a) the rescue as a going concern of the NHS foundation trust or company subject to the health special administration order is not reasonably practicable or is not reasonably practicable without such transfers,
 - (b) the rescue of the trust or company as a going concern will not achieve that objective or will not do so without such transfers,
 - (c) such transfers would produce a result for the trust’s or company’s creditors as a whole that is better than the result that would be produced without them, or
 - (d) in the case of a company, such transfers would, without prejudicing the interests of its creditors as a whole, produce a result for its members as a whole that is better than the result that would be produced without them.

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116 Health special administration regulations

- (1) Regulations (referred to in this Chapter as “health special administration regulations”) must make further provision about health special administration orders.
- (2) Health special administration regulations may apply (with or without modifications) –
 - (a) any provision of Part 2 of the Insolvency Act 1986 (administration) or any related provision of that Act, and
 - (b) any other enactment which relates to insolvency or administration or makes provision by reference to anything that is or may be done under that Act.
- (3) Health special administration regulations may in particular provide that the court may make a health special administration order in relation to a relevant provider if it is satisfied, on a petition by the Secretary of State under section 124A of the Insolvency Act 1986 (petition for winding up on grounds of public interest), that it would be just and equitable (disregarding the objective of the health special administration) to wind up the provider in the public interest.
- (4) Health special administration regulations may make provision about –
 - (a) the application of procedures under the Insolvency Act 1986 in relation to relevant providers, and
 - (b) the enforcement of security over property of relevant providers.
- (5) Health special administration regulations may modify this Chapter or any enactment mentioned in subsection (6) in relation to any provision made by virtue of this Chapter.
- (6) The enactments are –
 - (a) the Insolvency Act 1986,
 - (b) any other enactment which relates to insolvency or administration or makes provision by reference to anything that is or may be done under that Act, and
 - (c) section 242 of the National Health Service Act 2006 (NHS foundation trusts etc: public involvement and consultation duties).
- (7) The power to make rules under section 411 of the Insolvency Act 1986 (company insolvency rules) applies for the purpose of giving effect to provision made by virtue of this Chapter as it applies for the purpose of giving effect to Parts 1 to 7 of that Act.
- (8) For that purpose –
 - (a) the power to make rules in relation to England and Wales is exercisable by the Lord Chancellor with the concurrence of the Secretary of State and, in the case of rules that affect court procedure, with the concurrence of the Lord Chief Justice;
 - (b) references in section 411 of that Act to those Parts are to be read as including a reference to this Chapter.
- (9) Before making health special administration regulations the Secretary of State must consult –
 - (a) Monitor, and
 - (b) such other persons as the Secretary of State considers appropriate.

117 Transfer schemes

- (1) Health special administration regulations may make provision about transfer schemes to achieve the objective of a health special administration (see section 115).
- (2) Health special administration regulations may in particular include provision—
- (a) for the making of a transfer scheme to be subject to the consent of Monitor and the licence holder to whom the transfer is being made, and
 - (b) for Monitor to have power to modify a transfer scheme with the consent of parties to the transfers effected by the scheme.
- (3) Health special administration regulations may in particular provide that a transfer scheme may include provision—
- (a) for the transfer of property, rights and liabilities from an NHS foundation trust or company subject to a health special administration order to another licence holder (including property, rights and liabilities which would not otherwise be capable of being transferred or assigned),
 - (b) for the transfer of property acquired, and rights and liabilities arising, after the making of the scheme,
 - (c) for the creation of interests or rights, or the imposition of liabilities, and
 - (d) for the transfer, or concurrent exercise of, functions under enactments.

118 Indemnities

Health special administration regulations may make provision about the giving by Monitor of indemnities in respect of—

- (a) liabilities incurred in connection with the discharge by health special administrators of their functions, and
- (b) loss or damage sustained in that connection.

119 Modification of this Chapter under Enterprise Act 2002

- (1) The power to modify or apply enactments conferred on the Secretary of State by each of the sections of the Enterprise Act 2002 mentioned in subsection (2) includes power to make such consequential modifications of provision made by virtue of this Chapter as the Secretary of State considers appropriate in connection with any other provision made under that section.
- (2) Those sections are—
- (a) sections 248 and 277 (amendments consequential on that Act), and
 - (b) section 254 (power to apply insolvency law to foreign companies).

CHAPTER 7

FINANCIAL ASSISTANCE IN HEALTH SPECIAL ADMINISTRATION CASES

Establishment of mechanisms

120 Duty to establish mechanisms for providing financial assistance

- (1) Monitor must establish, and secure the effective operation of, one or more mechanisms for providing financial assistance in cases where a provider is subject to a health special administration order (within the meaning of Chapter 6). 5
- (2) Mechanisms that Monitor may establish under this section include, in particular – 10
 - (a) mechanisms for raising money to make grants or loans or to make payments in consequence of indemnities given by Monitor by virtue of section 118;
 - (b) mechanisms for securing that providers arrange, or are provided with, insurance facilities. 15
- (3) Monitor may secure that a mechanism established under this section operates so as to enable it to recover the costs it incurs in establishing and operating the mechanism.
- (4) Monitor may establish different mechanisms for different providers or providers of different descriptions. 20
- (5) Monitor does not require permission under any provision of the Financial Services and Markets Act 2000 as respects activities carried out under this Chapter.
- (6) In this Chapter –
 - “commissioner” means a person who arranges for the provision of designated services; 25
 - “provider” means a person who provides designated services.
- (7) An order under section 279 providing for the commencement of this Chapter may require Monitor to comply with the duty to establish under subsection (1) before such date as the order specifies. 30

121 Power to establish fund

- (1) Monitor may, for the purposes of section 120, establish and maintain a fund.
- (2) *In order to raise money for investment in a fund it establishes under this section, Monitor may impose requirements on providers or commissioners.*
- (3) Monitor must appoint at least two managers for a fund it establishes under this section. 35
- (4) A manager of a fund may be an individual, a firm or a body corporate.
- (5) Monitor must not appoint an individual as manager of a fund unless it is satisfied that the individual has the appropriate knowledge and experience for managing investments. 40

- | | |
|--|----|
| (6) Monitor must not appoint a firm or body corporate as manager of a fund unless it is satisfied that arrangements are in place to secure that any individual who will exercise functions of the firm or body corporate as manager will, at the time of doing so, have the appropriate knowledge and experience for managing investments. | 5 |
| (7) Monitor must not appoint an individual, firm or body corporate as manager of a fund unless the individual, firm or body is an authorised or exempt person within the meaning of the Financial Services and Markets Act 2000. | |
| (8) Monitor must secure the prudent management of any fund it establishes under this section. | 10 |

Applications for financial assistance

122 Applications

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|---|----|
| (1) Monitor may, on an application by a health special administrator, provide financial assistance to the health special administrator by using a mechanism established under section 120. | 15 |
| (2) An application under this section must be in such form, and must be supported by such evidence or other information, as Monitor may require (and a requirement under this subsection may be imposed after the receipt, but before the determination, of the application). | |
| (3) If Monitor grants an application under this section, it must notify the applicant of – | 20 |
| (a) the purpose for which the financial assistance is being provided, and | |
| (b) the other conditions to which its provision is subject. | |
| (4) The health special administrator must secure that the financial assistance is used only – | 25 |
| (a) for the purpose notified under subsection (3)(a), and | |
| (b) in accordance with the conditions notified under subsection (3)(b). | |
| (5) Financial assistance under this section may be provided only in the period during which the provider in question is in health special administration. | |
| (6) If Monitor refuses an application under this section, it must notify the applicant of the reasons for the refusal. | 30 |
| (7) Monitor must, on a request by an applicant whose application under this section has been refused, reconsider the application; but no individual involved in the decision to refuse the application may be involved in the decision on the reconsideration of the application. | 35 |
| (8) For the purposes of reconsidering an application, Monitor may request information from the applicant. | |
| (9) Monitor must notify the applicant of its decision on reconsidering the application; and – | |
| (a) if Monitor grants the application, it must notify the applicant of the matters specified in subsection (3), and | 40 |
| (b) if Monitor refuses the application, it must notify the applicant of the reasons for the refusal. | |

- (10) In this Chapter, “health special administrator” has the meaning given in Chapter 6 (see section 114(3)).

123 Grants and loans

- (1) Monitor may not provide financial assistance under section 122 in the form of a grant or loan unless it is satisfied that – 5
- (a) it is necessary for the provider –
 - (i) to be able to continue to provide designated services, or
 - (ii) to be able to secure a viable business in the long term, and
 - (b) no other source of funding which would enable it do so and on which it would be reasonable for it to rely is likely to become available to it. 10
- (2) The terms of a grant or loan must include a term that the whole or a specified part of the grant or loan becomes repayable in the event of a breach by the provider or health special administrator of the terms of the grant or loan.
- (3) Subject to that, where Monitor makes a grant or loan under section 122, it may do so in such manner and on such terms as it may determine. 15
- (4) Monitor may take such steps as it considers appropriate (including steps to adjust the amount of future payments towards the mechanism established under section 120 to raise funds for grants or loans under section 122) to recover overpayments in the provision of a grant or loan under that section.
- (5) The power to recover an overpayment under subsection (4) includes a power to recover interest, at such rate as Monitor may determine, on the amount of the overpayment for the period beginning with the making of the overpayment and ending with its recovery. 20

Charges on commissioners

124 Power to impose charges on commissioners 25

- (1) *The Secretary of State may by regulations confer power on Monitor to require commissioners to pay charges relating to such of Monitor’s functions that relate to securing the continued provision of designated services.*
- (2) The regulations must provide that the amount of a charge imposed by virtue of this section is to be such amount – 30
- (a) as may be prescribed, or
 - (b) as is determined by reference to such criteria, and by using such method, as may be prescribed.
- (3) The regulations must – 35
- (a) prescribe to whom the charge is to be paid;
 - (b) prescribe when the charge becomes payable;
 - (c) where the amount of the charge is to be determined in accordance with subsection (2)(b), require Monitor to carry out consultation in accordance with the regulations before imposing the charge;
 - (d) provide for any amount that is not paid by the time prescribed for the purposes of paragraph (b) to carry interest at the rate for the time being specified in section 18 of the Judgments Act 1838; 40

- (e) provide for any unpaid balance and accrued interest to be recoverable summarily as a civil debt.
- (4) Where the person that the regulations prescribe for the purposes of subsection (3)(a) is a provider, the regulations may confer power on Monitor to require the provider to pay Monitor the amount of the charge in question in accordance with the regulations. 5
- (5) Before making regulations under this section, the Secretary of State must consult –
 - (a) Monitor, and
 - (b) the National Health Service Commissioning Board. 10
- (6) Regulations under this section may apply with modifications provision made by sections 127 to 129 in relation to charges imposed by virtue of this section.

Levy on providers

125 Imposition of levy

- (1) *The power under section 121(2) includes, in particular, power to impose a levy on providers for each financial year.* 15
- (2) Before deciding whether to impose a levy under this section for the coming financial year, Monitor must estimate –
 - (a) the amount that will be required for the purpose of providing financial assistance in accordance with this Chapter, 20
 - (b) the amount that will be collected from commissioners by way of charges imposed by virtue of section 124 during that year, and
 - (c) the amount that will be standing to the credit of the fund at the end of the current financial year.
- (3) Before the start of a financial year in which Monitor proposes to impose a levy under this section, it must determine –
 - (a) the factors by reference to which the rate of the levy is to be assessed,
 - (b) the time or times by reference to which those factors are to be assessed, and
 - (c) the time or times during the year when the levy, or an instalment of it, becomes payable. 30
- (4) Where the determinations under subsection (3) reflect changes made to the factors by reference to which the levy is to be assessed, the notice under section 129(1)(b) must include an explanation of those changes.
- (5) A levy under this section may be imposed at different rates for different providers. 35

126 Power of Secretary of State to set limit on levy and charges

- (1) Before the beginning of each financial year, the Secretary of State may, with the approval of the Treasury, specify by order –
 - (a) the maximum amount that Monitor may raise from levies it imposes under section 125 for that year, and 40
 - (b) the maximum amount that it may raise from charges it imposes by virtue of section 124 for that year.

- (2) Where the Secretary of State makes an order under this section, Monitor must secure that the levies and charges for that year are at a level that Monitor estimates will, in each case, raise an amount not exceeding the amount specified for that case in the order.

127 Consultation 5

- (1) This section applies where Monitor is proposing to impose a levy under section 125 for the coming financial year and –
- (a) has not imposed a levy under that section for that or any previous year,
 - (b) has been imposing the levy for the current financial year but proposes to make relevant changes to it for the coming financial year, or 10
 - (c) has been imposing the levy for the current financial year and the financial year preceding it, but has not been required to serve a notice under this section in respect of the levy for either of those years.
- (2) A change to a levy is relevant for the purposes of subsection (1)(b) if it is a change to the factors by reference to which the levy is to be assessed. 15
- (3) Before making the determinations under section 125(3) in respect of the levy, Monitor must send a notice to –
- (a) the Secretary of State,
 - (b) the National Health Service Commissioning Board,
 - (c) each commissioning consortium, 20
 - (d) each provider, and
 - (e) such other persons as it considers appropriate.
- (4) Monitor must publish a notice that it sends under subsection (3).
- (5) In a case within subsection (1)(a) or (c), the notice must state –
- (a) the factors by reference to which Monitor proposes to assess the rate of the levy, 25
 - (b) the time or times by reference to which it proposes to assess the rate of levy, and
 - (c) the time or times during the coming financial year when it proposes that the levy, or an instalment of it, will become payable. 30
- (6) In a case within subsection (1)(b), the notice must specify the relevant changes Monitor proposes to make.
- (7) A notice under this section must specify when the consultation period in relation to the proposals ends; and for that purpose, the consultation period is the period of 28 days beginning with the day on which the notice is published under subsection (4). 35

128 Responses to consultation

- (1) If Monitor receives objections from one or more providers to its proposals, it may not give notice under section 129(1)(b) unless –
- (a) the conditions in subsection (2) are met, or 40
 - (b) where those conditions are not met, Monitor has made a reference to the Competition Commission.
- (2) The conditions referred to in subsection (1)(a) are that –

- (a) one or more providers object to the proposals within the consultation period, and
- (b) the objection percentage and the share of supply percentage are each less than the prescribed percentage.
- (3) In subsection (2) – 5
- (a) the “objection percentage” is the proportion (expressed as a percentage) of the providers who objected to the proposals, and
- (b) the “share of supply percentage” is the proportion (expressed as a percentage) of the providers who objected to the proposals, weighted according to their share of the supply in England of such services as may be prescribed. 10
- (4) A reference under subsection (1)(b) must be so framed as to require the Competition Commission to investigate and report on the questions – 15
- (a) whether in making the proposals, Monitor failed to give sufficient weight to the matters in section 54,
- (b) if so, whether that failure operates, or may be expected to operate, against the public interest, and
- (c) if so, whether the effects adverse to the public interest which that failure has or may be expected to have could be remedied or prevented by changes to the proposals. 20
- (5) Schedule 8 (which makes further provision about references to the Competition Commission) has effect in relation to a reference under subsection (1)(b); and for that purpose –
- (a) paragraph 1 is to be ignored,
- (b) in paragraph 5(2), the reference to six months is to be read as a reference to two months, 25
- (c) in paragraph 5(4), the reference to six months is to be read as a reference to one month,
- (d) in paragraph 7, sub-paragraphs (4) to (7) and (9) are to be ignored (and, in consequence of that, in sub-paragraph (8), the words from the beginning to “sub-paragraph (4)(c)” are also to be ignored), and 30
- (e) the references to relevant persons are to be construed in accordance with subsection (6).
- (6) The relevant persons referred to in Schedule 8 are – 35
- (a) in paragraphs 3 and 5(6) –
- (i) the National Health Service Commissioning Board, and
- (ii) the providers who objected to the proposals,
- (b) in paragraph 6(6), the providers who objected to the proposals, and
- (c) in paragraph 8(10) – 40
- (i) Monitor, and
- (ii) the providers who objected to the proposals.
- (7) In investigating the question under subsection (4)(a), the Competition Commission must have regard to the matters in relation to which Monitor has duties under this Chapter.
- (8) Regulations prescribing a percentage for the purposes of subsection (2)(b) may include provision prescribing the method used for determining a provider’s share of the supply in England of the services concerned. 45

129 Amount payable

- (1) Monitor must –
 - (a) calculate the amount which each provider who is to be subject to a levy under section 125 for a financial year is to be liable to pay in respect of that year, and 5
 - (b) notify the provider of that amount and the date or dates on which it, or instalments of it, will become payable.
- (2) If the provider is to be subject to the levy for only part of the financial year, it is to be liable to pay only the amount which bears to the amount payable for the whole financial year the same proportion as the part of the financial year for which the provider is to be subject to the levy bears to the whole financial year. 10
- (3) The amount which a provider is liable to pay may be zero.
- (4) Subsection (5) applies if, during a financial year in which Monitor is imposing a levy under section 125, it becomes satisfied that the risk of a provider who is subject to the levy going into health special administration has changed by reference to what it was – 15
 - (a) at the start of the year, or
 - (b) if Monitor has already exercised the power under subsection (5) in relation to the levy in the case of that provider, at the time it did so. 20
- (5) Monitor may notify the provider that Monitor proposes to adjust the amount that the provider is liable to pay so as to reflect the change; and the notice must specify the amount of the proposed adjustment.
- (6) Following the expiry of the period of 28 days beginning with the day after that on which Monitor sends the notice, it may make the adjustment. 25
- (7) In a case within subsection (2), subsection (4) has effect as if references to the financial year were references to the part of the financial year for which the provider is to be subject to the levy.
- (8) Where a provider who reasonably believes that Monitor has miscalculated the amount notified to the provider under subsection (1) or (5) requests Monitor to recalculate the amount, Monitor must – 30
 - (a) comply with the request, and
 - (b) send the provider written notice of its recalculation.
- (9) Subsection (8) does not apply to a request to recalculate an amount in respect of a financial year preceding the one in which the request is made. 35
- (10) If the whole or part of the amount which a person is liable to pay is not paid by the date by which it is required to be paid, the unpaid balance carries interest at the rate for the time being specified in section 17 of the Judgments Act 1838; and the unpaid balance and accrued interest are recoverable summarily as a civil debt. 40

Supplementary

130 Investment principles and reviews

- (1) Monitor must prepare and publish a statement of the principles that govern its decisions, or decisions made on its behalf, about making investments for the purposes of this Chapter. 5
- (2) Monitor must –
 - (a) in each financial year, review the statement,
 - (b) if it considers necessary in light of the review, revise the statement, and
 - (c) if it revises the statement, publish the revised statement.
- (3) As soon as reasonably practicable after the end of each financial year, Monitor must undertake and publish a review of the operation during that year of – 10
 - (a) the procedure for health special administration under Chapter 6, and
 - (b) such mechanisms as have been established under section 120.
- (4) The purposes of the review under subsection (3)(b) are – 15
 - (a) to assess the operation of the mechanisms concerned,
 - (b) to assess the accuracy of the estimates given by Monitor in relation to the operation of the mechanisms,
 - (c) to assess what improvements can be made to the process for making estimates in relation to the operation of the mechanisms, and
 - (d) to review the extent of the protection which the mechanisms are required to provide. 20
- (5) Where a fund established under section 121 has been in operation for the whole or part of the year concerned, the review published under this section must specify – 25
 - (a) the income of the fund during that year, and
 - (b) the expenditure from the fund during that year.
- (6) Monitor must exclude from a review published under this section information which it is satisfied is – 30
 - (a) commercial information the disclosure of which would, or might, significantly harm the legitimate business interests of an undertaking to which it relates;
 - (b) information relating to the private affairs of an individual the disclosure of which would, or might, in its opinion significantly harm that person's interests.

131 Borrowing

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- (1) Monitor may –
 - (a) borrow from a deposit-taker such sums as it may from time to time require for exercising its functions under this Chapter;
 - (b) give security for sums that it borrows.
- (2) But Monitor may not borrow if the effect would be – 40
 - (a) to take the aggregate amount outstanding in respect of the principal of sums borrowed by it over such limit as the Secretary of State may by order specify, or

- (b) to increase the amount by which the aggregate amount so outstanding exceeds that limit.
 - (3) In this section, “deposit-taker” means –
 - (a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000, or 5
 - (b) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to that Act which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to accept deposits.
 - (4) The definition of “deposit-taker” in subsection (3) must be read with – 10
 - (a) section 22 of the Financial Services and Markets Act 2000,
 - (b) any relevant order under that section, and
 - (c) Schedule 2 to that Act.
- 132 Shortfall or excess of available funds, etc.**
- (1) *The Secretary of State may provide financial assistance to Monitor if the Secretary of State is satisfied that – 15*
 - (a) *there are insufficient funds available from a mechanism established under section 120, or*
 - (b) *the mechanism is otherwise unable to operate effectively.*
 - (2) If the Secretary of State is satisfied that the level of funds available from a mechanism established under section 120 exceeds the level that is necessary, the Secretary of State may direct Monitor to transfer the excess to the Secretary of State. 20
 - (3) If the Secretary of State is satisfied that a mechanism established under section 120 has become dormant, or if a mechanism so established is being wound up, the Secretary of State may direct Monitor to transfer to the Secretary of State such funds as are available from the mechanism. 25

CHAPTER 8

GENERAL

- 133 Service of documents** 30
- (1) A notice required under this Part to be given or sent to or served on a person (“R”) may be given or sent to or served on R –
 - (a) by being delivered personally to R,
 - (b) by being sent to R –
 - (i) by a registered post service, as defined by section 125(1) of the Postal Services Act 2000, or 35
 - (ii) by a postal service which provides for the delivery of the document to be recorded, or
 - (c) subject to section 134, by being sent to R by an electronic communication. 40
 - (2) Where a notice is sent as mentioned in subsection (1)(b), it is, unless the contrary is proved, to be taken to have been received on the third day after the day on which it is sent.

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- (3) Where notice is sent as mentioned in subsection (1)(c) in accordance with section 134, it is, unless the contrary is proved, to be taken to have been received on the next working day after the day on which it is transmitted.
- (4) In subsection (3) “working day” means a day other than –
- (a) a Saturday or a Sunday; 5
 - (b) Christmas Day or Good Friday; or
 - (c) a day which is a bank holiday in England under the Banking and Financial Dealings Act 1971.
- (5) A notice required under this Part to be given or sent to or served on a body corporate or a firm is duly given, sent or served if it is given or sent to or served on the secretary or clerk of that body or a partner of that firm. 10
- (6) For the purposes of section 7 of the Interpretation Act 1978 in its application to this section, the proper address of a person is –
- (a) in the case of a person who holds a licence under Chapter 4 who has notified Monitor of an address for service, that address, and 15
 - (b) in any other case, the address determined in accordance with subsection (7).
- (7) That address is –
- (a) in the case of a secretary or clerk of a body corporate, the address of the registered or principal office of the body, 20
 - (b) in the case of a partner of a firm, the address of the principal office of the firm, and
 - (c) in any other case, the last known address of the person.
- (8) In this section and in section 134 –
- “electronic communication” has the same meaning as in the Electronic Communications Act 2000; 25
 - “notice” includes any other document.
- 134 Electronic communications**
- (1) If a notice required or authorised by this Part to be given or sent by or to a person or to be served on a person is sent by an electronic communication, it is to be treated as given, sent or served only if the requirements of subsection (2) or (3) are met. 30
- (2) If the person required or authorised to give, send or serve the notice is Monitor –
- (a) the person to whom the notice is given or sent or on whom it is served must have indicated to Monitor the person’s willingness to receive notices by an electronic communication and provided an address suitable for that purpose, and 35
 - (b) the notice must be sent to or given or served at the address so provided.
- (3) If the person required or authorised to give, send or serve the notice is not Monitor, the notice must be given, sent or served in such manner as Monitor may require. 40
- (4) An indication given for the purposes of subsection (2) may be given generally for the purposes of notices required or authorised to be given by Monitor under this Part or may be limited to notices of a particular description. 45

- (5) Monitor must publish such requirements as it imposes under subsection (3).

135 Interpretation and consequential amendments

- (1) In this Part –
- “commissioner”, in relation to a health care service, means the person who arranges for the provision of the service (and “commission” is to be construed accordingly); 5
 - “designated service” means a service designated under section 69;
 - “enactment” includes an enactment contained in subordinate legislation (within the meaning of the Interpretation Act 1978);
 - “financial year” means a period of 12 months ending with 31 March; 10
 - “health care” and “health care service” each have the meaning given in section 52;
 - “the NHS” has the meaning given in that section;
 - “prescribed” means prescribed in regulations;
 - “service” includes facility. 15
- (2) Schedule 11 (which contains minor and consequential amendments) has effect.

PART 4

NHS FOUNDATION TRUSTS & NHS TRUSTS

Governance and management

136 Governors 20

- (1) In paragraph 7 of Schedule 7 to the National Health Service Act 2006 (public benefit corporation to have governors) –
- (a) in sub-paragraph (1), for “a board of governors” substitute “a council of governors”, and
 - (b) in sub-paragraphs (2), (3) and (4), for “the board” substitute “the council”. 25
- (2) Omit paragraph 9(3) of that Schedule (requirement for at least one member of council of governors to be appointed by PCT).
- (3) For paragraph 9(7) of that Schedule (partnership organisations) substitute –
- “(7) Any organisation specified in the constitution for the purposes of this sub-paragraph may appoint one or more members of the council (but no more than the number specified for those purposes in the constitution).” 30
- (4) After paragraph 10 of that Schedule insert –
- “10A The general duties of the council of governors are – 35
 - (a) to hold the non-executive directors individually and collectively to account for the performance of the board of directors, and
 - (b) to represent the interests of the members of the corporation as a whole and the interests of the public.” 40

- (5) After paragraph 10A of that Schedule insert –
- “10B A public benefit corporation must take steps to secure that the governors are equipped with the skills and knowledge they require in their capacity as such.”
- (6) After paragraph 10B of that Schedule insert – 5
- “10C For the purpose of obtaining information about the corporation’s performance of its functions or the directors’ performance of their duties (and deciding whether to propose a vote on the corporation’s or directors’ performance), the council of governors may require one or more of the directors to attend a meeting.” 10
- (7) In paragraph 26(2) of that Schedule (information that must be given in annual reports etc.), after paragraph (a) insert –
- “(aa) information on any occasions in the period to which the report relates on which the council of governors exercised its power under paragraph 10C,”. 15
- (8) In consequence of subsection (1) –
- (a) in sections 33(4)(a), 35(2)(c) and (5)(c), 39(3)(a), 59(1), (2)(b) and (5) and 60(1), for “board of governors” substitute “council of governors”,
- (b) in paragraphs 8 to 14, 17, 18, 20, 21, 23, 27 and 28 of Schedule 7, for “the board”, in each place it appears, substitute “the council”, 20
- (c) for the cross-heading preceding paragraph 7 of that Schedule substitute “Council of Governors”,
- (d) in the cross-heading preceding paragraph 28 of that Schedule, for “board” substitute “council”, and
- (e) in paragraphs 4(2) and 5(1) of Schedule 10, for “board of governors” substitute “council of governors”. 25

137 Directors

- (1) After paragraph 18 of Schedule 7 to the National Health Service Act 2006 insert –
- “18A The general duty of the board of directors, and of each director individually, is to act with a view to promoting the success of the corporation so as to maximise the benefits for the members of the corporation as a whole and for the public.” 30
- (2) After paragraph 18A of that Schedule insert –
- “18B(1) The duties that a director of a public benefit corporation has by virtue of being a director include in particular – 35
- (a) a duty to avoid a situation in which the director has (or can have) a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the corporation;
- (b) a duty not to accept a benefit from a third party by reason of being a director or doing (or not doing) anything in that capacity. 40
- (2) The duty referred to in sub-paragraph (1)(a) is not infringed if –
- (a) the situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or 45

- (b) the matter has been authorised in accordance with the constitution.
- (3) The duty referred to in sub-paragraph (1)(b) is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest. 5
- (4) In sub-paragraph (1)(b), “third party” means a person other than—
 - (a) the corporation, or
 - (b) a person acting on its behalf.”
- (3) After paragraph 18B of that Schedule insert—
 - “18C(1) If a director of a public benefit corporation has in any way a direct or indirect interest in a proposed transaction or arrangement with the corporation, the director must declare the nature and extent of that interest to the other directors. 10
 - (2) If a declaration under this paragraph proves to be, or becomes, inaccurate or incomplete, a further declaration must be made. 15
 - (3) Any declaration required by this paragraph must be made before the corporation enters into the transaction or arrangement.
 - (4) This paragraph does not require a declaration of an interest of which the director is not aware or where the director is not aware of the transaction or arrangement in question. 20
 - (5) A director need not declare an interest—
 - (a) if it cannot reasonably be regarded as likely to give rise to a conflict of interest;
 - (b) if, or to the extent that, the directors are already aware of it;
 - (c) if, or to the extent that, it concerns terms of the director’s appointment that have been or are to be considered—
 - (i) by a meeting of the board of directors, or
 - (ii) by a committee of the directors appointed for the purpose under the constitution.” 25
- (4) After paragraph 18C of that Schedule insert— 30
 - “18D(1) Before holding a meeting, the board of directors must send a copy of the agenda of the meeting to the council of governors.
 - (2) As soon as practicable after holding a meeting, the board of directors must send a copy of the minutes of the meeting to the council of governors.” 35

138 Members

- (1) In section 61 of the National Health Service Act 2006 (representative membership), the existing text becomes subsection (1) and, in that subsection, for “An authorisation may require an NHS foundation trust to” substitute “An NHS foundation trust must”. 40
- (2) After that subsection insert—
 - “(2) In deciding which areas are to be areas for public constituencies, or in deciding whether there is to be a patients’ constituency, an NHS

foundation trust must have regard to the need for those eligible for such membership to be representative of those to whom the trust provides services.”

139 Accounts: initial arrangements

- (1) In paragraph 24 of Schedule 7 to the National Health Service Act 2006 (accounts: general), for sub-paragraph (1) substitute – 5
- “(1) A public benefit corporation must keep proper accounts and proper records in relation to the accounts.
- (1A) The regulator may with the approval of the Secretary of State give directions to the corporation as to the content and form of its accounts.” 10
- (2) In paragraph 25 (annual accounts) of that Schedule, in sub-paragraph (1), for “the Treasury” substitute “the Secretary of State”.
- (3) After sub-paragraph (1) of that paragraph insert –
- “(1A) The regulator may with the approval of the Secretary of State direct a public benefit corporation – 15
- (a) to prepare accounts in respect of such period or periods as may be specified in the direction;
- (b) that any accounts prepared by it by virtue of paragraph (a) are to be audited in accordance with such requirements as may be specified in the direction.” 20
- (4) In sub-paragraph (2) of that paragraph –
- (a) after “annual accounts” insert “or in preparing any accounts by virtue of sub-paragraph (1A)(a)”,
- (b) for “the Treasury” substitute “the Secretary of State”, and 25
- (c) for “information to be given in” substitute “content and form of”.
- (5) In sub-paragraph (3) of that paragraph, after “annual accounts” insert “, or of any accounts to be prepared by it by virtue of sub-paragraph (1A)(a),”.
- (6) In sub-paragraph (4) of that paragraph –
- (a) after “must” insert “send a copy of the annual accounts, and a copy of any report of the auditor on them, to the regulator within such period as the regulator may direct”, and 30
- (b) omit paragraphs (a) and (b).
- (7) After that sub-paragraph insert –
- “(4A) The corporation must send to the regulator within such period as the regulator may direct – 35
- (a) a copy of any accounts prepared by the corporation by virtue of sub-paragraph (1A)(a), and
- (b) a copy of any report of an auditor on them prepared by virtue of sub-paragraph (1A)(b).” 40

140 Accounts: variations to initial arrangements

- (1) In paragraph 24 of Schedule 7 to the National Health Service Act 2006 (accounts: general), in sub-paragraph (1A), for “The regulator may with the

- approval of the Secretary of State” substitute “The Secretary of State may with the approval of the Treasury”.
- (2) In sub-paragraph (5) of that paragraph, for “the regulator” substitute “the Secretary of State”.
- (3) In paragraph 25 (annual accounts), in sub-paragraph (1), for “the regulator may with the approval of the Secretary of State” substitute “the Secretary of State may with the approval of the Treasury”. 5
- (4) In sub-paragraph (1A) of that paragraph, for “The regulator may with the approval of the Secretary of State” substitute “The Secretary of State may with the approval of the Treasury”. 10
- (5) In sub-paragraph (2) of that paragraph, for “the regulator with the approval of the Secretary of State” substitute “the Secretary of State with the approval of the Treasury”.
- (6) In sub-paragraphs (3), (4) and (4A) of that paragraph, for “the regulator”, in each place it appears, substitute “the Secretary of State”. 15
- (7) This section applies to such financial year as is specified in the order under section 279 that brings the preceding provisions of this section into force (and to the subsequent financial years); accordingly, this section does not affect the application of paragraphs 24 and 25 of Schedule 7 to the National Health Service Act 2006 (as amended by section 139) to the financial years preceding the specified financial year. 20
- (8) In subsection (7), “financial year” has the meaning given in section 275(1) of the National Health Service Act 2006.

141 Annual report and forward plan

- (1) In sub-paragraph (2) of paragraph 26 of Schedule 7 to the National Health Service Act 2006 (information that must be included in annual report), after paragraph (aa) (inserted by section 136(7)) insert – 25
- “(ab) information on the corporation’s policy on pay and on the work of the committee established under paragraph 18(2) and such other procedures as the corporation has on pay, 30
- (ac) information on the remuneration of the directors and on the expenses of the governors and the directors,”.
- (2) After that sub-paragraph insert –
- “(2A) Before imposing a requirement under sub-paragraph (2)(b) that the regulator considers is sufficiently significant to justify consultation, the regulator must consult such persons as it considers appropriate.” 35
- (3) The Secretary of State may by order –
- (a) amend sub-paragraph (2) of paragraph 26 of that Schedule so as to substitute for paragraph (b) the following –
- “(b) such other information as may be prescribed.”, and 40
- (b) repeal sub-paragraph (2A) of that paragraph.
- (4) In paragraph 27(1) of that Schedule (duty to send forward plan to regulator), for “the regulator” substitute “the Secretary of State”.

- (5) Omit section 39(2)(e) of that Act (requirement for copy of forward plan to be on register).

142 Meetings

- (1) After paragraph 27 of Schedule 7 to the National Health Service Act 2006 insert – 5

“Annual meeting of members

27A (1) A public benefit corporation must hold an annual meeting of its members.

(2) The meeting must be open to members of the public.

(3) At least one member of the board of directors of the corporation must attend the meeting and present the following documents to the members at the meeting – 10

(a) the annual accounts,

(b) any report of the auditor on them,

(c) the annual report. 15

(4) Where an amendment is made to the constitution in relation to the powers or duties of the council of governors of a public benefit corporation (or otherwise with respect to the role that the council has as part of the corporation) –

(a) at least one member of the council of governors must attend the next meeting to be held under this paragraph and present the amendment, and 20

(b) the corporation must give the members an opportunity to vote on whether they approve the amendment.

(5) If more than half of the members voting approve the amendment, the amendment continues to have effect; otherwise, it ceases to have effect and the corporation must take such steps as are necessary as a result.” 25

- (2) In paragraph 28 of that Schedule (meeting of council of governors to consider annual accounts and reports), the existing text of which becomes sub-paragraph (1), after that sub-paragraph insert – 30

“(2) Nothing in sub-paragraph (1) prevents the council of governors from holding a general meeting more than once a year.”.

- (3) After that paragraph insert –

“Combined meetings of members and governors 35

28A A public benefit corporation may hold a meeting which combines a meeting under paragraph 27A with a meeting under paragraph 28.”

143 Voting

- (1) After paragraph 29 of Schedule 7 to the National Health Service Act 2006

insert –

“Power to make provision about voting

- 30 (1) Regulations may amend this Chapter so as to add, vary or omit provision relating to voting by members of the council of governors of a public benefit corporation that is an NHS foundation trust, by its directors or by its members. 5
- (2) The power under sub-paragraph (1) is exercisable only in relation to provision in this Chapter that was inserted, or otherwise provided for, by Part 4 of the Health and Social Care Act 2011.”
- (2) In section 64 of that Act (regulations under Chapter 5 of Part 2 of that Act), in subsection (3), after paragraph (a) (but before the “and” following it) insert – 10
- “(aa) regulations under paragraph 30(1) of Schedule 7,”.

Foundation trust status

144 Authorisation

- (1) In section 30(1) of the National Health Service Act 2006 (definition of NHS foundation trust), for “which is authorised under this Chapter to provide” substitute “the function of which is to provide in accordance with this Chapter”. 15
- (2) Omit section 33(2)(a) of that Act (requirement for application for authorisation to describe goods and services to be provided). 20
- (3) In section 35(2) of that Act (matters as to which the regulator must be satisfied before giving authorisation), for paragraph (e) substitute –
- “(e) the applicant will be able to provide goods and services for the purposes of the health service in England,”.
- (4) Omit section 35(4) and (7) of that Act (power to give authorisation on terms the regulator considers appropriate). 25
- (5) Omit section 38 of that Act (variation of authorisation).
- (6) Omit section 39(2)(b) of that Act (requirement for copy of authorisation to be on register).
- (7) Omit section 49 of that Act (authorisation to require trust to allow regulator to enter and inspect trust’s premises). 30
- (8) Omit paragraph 22(1)(b) of Schedule 7 to that Act (requirement for copy of authorisation to be available for public inspection).

145 Bodies which may apply for foundation trust status

- (1) Omit section 34 of the National Health Service Act 2006 (application for authorisation by body other than NHS trust). 35
- (2) In section 35(1) of that Act (bodies which may be given authorisation), omit paragraph (b) (public benefit corporations) and the preceding “or”. 40
- (3) Omit section 36(2) of that Act (public benefit corporation to become NHS foundation trust on being given authorisation).

- (4) Despite subsection (1) –
- (a) section 34(1) to (4) of that Act continues to have effect in the case of an application which, immediately before the commencement of that subsection, is pending determination, and
 - (b) section 34(5) to (7) of that Act continues to have effect in the case of an existing public benefit corporation. 5
- (5) Despite subsection (2), section 35(1)(b) of that Act continues to have effect in the case of an existing public benefit corporation which, immediately before the commencement of that subsection, has not been given an authorisation under section 35. 10
- (6) Despite subsection (3), section 36(2) of that Act continues to have effect in the case of an existing public benefit corporation.
- (7) In subsections (4) to (7), “existing public benefit corporation” means a public benefit corporation –
- (a) incorporated under section 34 of that Act and in existence immediately before the commencement of this section, or 15
 - (b) incorporated under that section by virtue of subsection (4).

146 Amendment of constitution

- (1) In section 37 of the National Health Service Act 2006 (amendments of constitution), the existing text of which becomes subsection (1), for “with the approval of the regulator” substitute “only if –
- (a) more than half of the members of the council of governors of the trust voting approve the amendments, and
 - (b) more than half of the members of the board of directors of the trust voting approve the amendments.” 20 25
- (2) After that subsection insert –
- “(2) Amendments made under this section take effect as soon as the conditions in subsection (1)(a) and (b) are satisfied.
 - (3) But an amendment is of no effect in so far as the constitution would, as a result of the amendment, not accord with Schedule 7. 30
 - (4) The trust must inform the regulator of amendments made under this section; but the regulator’s functions do not include a power or duty to determine whether or not the constitution, as a result of the amendments, accords with Schedule 7.”
- (3) Subsections (1) and (2) do not apply in the case of amendments in respect of which, immediately before the commencement of this section, Monitor has yet to decide whether or not to give approval under section 37 of the National Health Service Act 2006. 35

147 Panel for advising governors

After section 39 of the National Health Service Act 2006 insert –

“39A Panel for advising governors

- (1) The regulator may appoint a panel of persons to which a governor of an NHS foundation trust may refer a question as to whether the trust has failed or is failing – 5
 - (a) to act in accordance with its constitution, or
 - (b) to act in accordance with provision made by or under this Chapter.
- (2) A governor may refer a question to the panel only if more than half of the members of the council of governors voting approve the referral. 10
- (3) The panel –
 - (a) may regulate its own procedure, and
 - (b) may establish such procedures, and make such other arrangements, as it considers appropriate for the purpose of determining questions referred to it under this section. 15
- (4) The panel may decide whether, or to what extent, to carry out an investigation on a question referred to it under this section.
- (5) The panel may for that purpose, or for the purpose of carrying out such an investigation, request information or advice. 20
- (6) Where the panel has carried out such an investigation, it must publish a report of its determination of the question referred to it.
- (7) If a person refuses to comply with a request made under subsection (5), the report under subsection (6) may refer to the refusal.
- (8) On any proceedings before a court or tribunal relating to a question referred to the panel under this section, the court may take the panel’s report of its determination of the question into account. 25
- (9) The regulator –
 - (a) must pay expenses properly incurred by the panel, and
 - (b) must make administrative support available to the panel. 30
- (10) Regulations may make provision as to –
 - (a) eligibility for membership of the panel;
 - (b) the number of persons that may be appointed as members;
 - (c) the terms of appointment of members;
 - (d) circumstances in which a person ceases to be a member or may be suspended. 35

Finance

148 Financial powers etc.

- (1) In section 40 of the National Health Service Act 2006 (power of Secretary of State to give financial assistance to NHS foundation trusts), in subsection (1), for “give financial assistance” substitute “make loans”. 40

- (2) Omit subsection (2) of that section (financial assistance to include public dividend capital, grants, etc.).
- (3) At the end of that section insert –
- “(5) As soon as is practicable after the end of each financial year, the Secretary of State must prepare a report on the exercise of the power under subsection (1). 5
- (6) In relation to each loan made under that subsection during the year to which the report relates, the report must specify –
- (a) the amount of the loan,
- (b) the amount (if any) outstanding at the end of the year, and 10
- (c) the other terms on which the loan was made.
- (7) In relation to each loan made under that subsection during a previous financial year but not repaid by the beginning of the year to which the report relates, the report must specify –
- (a) the amount outstanding at the beginning of the year, 15
- (b) the amount (if any) outstanding at the end of the year, and
- (c) the other terms on which the loan was made.
- (8) The Secretary of State must publish a report under subsection (5).”
- (4) Omit section 41 of that Act (prudential borrowing code).
- (5) In section 42 of that Act (public dividend capital), omit subsection (4) (dividend payable by NHS foundation trust to be same as that payable by NHS trust). 20
- (6) Omit subsection (5) of that section (requirement for Secretary of State to consult the regulator).
- (7) At the end of that section insert –
- “(7) The terms which may be decided under subsection (3) include terms to which the exercise of any power of an NHS foundation trust to do any of the following will be subject as a consequence –
- (a) providing goods or services,
- (b) borrowing or investing money,
- (c) providing financial assistance, 30
- (d) acquiring or disposing of property,
- (e) entering into contracts, or making other arrangements, to do anything referred to in paragraphs (a) to (d),
- (f) applying for dissolution (whether or not when also applying for the establishment of one or more other trusts), 35
- (g) applying to acquire another body.”
- (8) After that section insert –
- “42A Criteria for making loans etc.**
- (1) The Secretary of State must publish guidance on the powers conferred by sections 40 and 42. 40
- (2) The guidance on the power to make a loan under section 40(1) must in particular –

- (a) explain that, in exercising the power, the Secretary of State will apply the principle that a loan should be made only where there is a reasonable expectation that it will be repaid in accordance with the terms on which it is made;
 - (b) include other criteria that the Secretary of State will apply when determining whether to exercise the power and, if so, the terms on which to make the loan. 5
- (3) The guidance on that power must also explain –
 - (a) the process for applying for a loan under section 40(1);
 - (b) the consequences of failing to comply with terms on which a loan is made under that provision. 10
- (4) The guidance on the power to decide terms under section 42(3) must in particular include the criteria that the Secretary of State will apply when deciding the terms.
- (5) The guidance on that power must also explain the consequences of failing to comply with the terms decided. 15
- (6) In preparing guidance under this section, the Secretary of State must have regard (among other things) to any generally accepted principles used by financial institutions to determine whether to make loans to bodies corporate and the terms on which to make loans to them. 20
- (7) Before publishing the guidance, the Secretary of State must consult –
 - (a) the Treasury,
 - (b) the regulator, and
 - (c) such other persons as the Secretary of State considers appropriate.” 25
- (9) Omit section 45 of that Act (disposal of protected property).
- (10) Omit section 46(2) and (3) of that Act (limitation on power of NHS foundation trusts to borrow money).
- (11) For section 50 of that Act (fees) substitute –
“50 Fees 30
An NHS foundation trust must pay to the regulator such fee as the regulator may determine in respect of its exercise of functions under –
 - (a) section 39;
 - (b) section 39A.”

Functions 35

149 Goods and services

- (1) In section 43 of the National Health Service Act 2006 (authorised services), for subsections (1) and (2) substitute –
 - “(1) The principal purpose of an NHS foundation trust is the provision of goods and services for the purposes of the health service in England. 40
 - (2) The NHS foundation trust may provide goods and services for any purposes related to –

-
- (a) the provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness, and
- (b) the promotion and protection of public health.”
- (2) In subsection (3) of that section (power to carry on other activities in order to generate additional income)–
- (a) for “subsection (1)” substitute “subsection (2)”, and
- (b) omit “, subject to any restrictions in the authorisation,”.
- (3) Omit subsections (4) to (7) of that section (goods and services that may be authorised, etc.).
- (4) For the title to that section substitute “Provision of goods and services”.
- (5) In paragraph 2 of Schedule 7 to that Act (constitution), the existing text becomes sub-paragraph (1), after that sub-paragraph insert–
- “(2) If the corporation is an NHS foundation trust, the constitution must specify its principal purpose (as to which, see section 43(1)).”
- 150 Private health care**
- (1) In section 44 of the National Health Service Act 2006 (private health care), omit–
- (a) subsection (1) (restriction on provision of private health services),
- (b) subsection (2) (cap on private income),
- (c) subsection (2A) (special provision for mental health foundation trusts), and
- (d) subsections (3) to (5) (interpretation etc.).
- (2) For the title to that section substitute “Power to charge for accommodation etc.”.
- 151 Information**
- For section 48 of the National Health Service Act 2006 (information) substitute–
- “48 Information**
- (1) The Secretary of State may require an NHS foundation trust to provide the Secretary of State with such information as the Secretary of State considers it necessary to have for the purposes of the functions of the Secretary of State in relation to the health service.
- (2) The information must be provided in such form, and at such time or within such period, as the Secretary of State may require.”

152 Significant transactions

After section 51 of the National Health Service Act 2006 insert –

“51A Significant transactions

- (1) An NHS foundation trust may enter into a significant transaction only if more than half of the members of the council of governors of the trust voting approve entering into the transaction. 5
- (2) “Significant transaction” means a transaction or arrangement of such description as may be specified in the trust’s constitution.
- (3) If an NHS foundation trust does not wish to specify any descriptions of transaction or arrangement for the purposes of subsection (2), the constitution of the trust must specify that it contains no such descriptions.” 10

Mergers, acquisitions, separations and dissolution

153 Mergers

- (1) In section 56 of the National Health Service Act 2006 (mergers), in subsection (1), for the words from “authorisation” to the end substitute “the dissolution of the trusts and the establishment of a new NHS foundation trust.” 15
- (2) After that subsection insert –
“(1A) An application under this section may be made only with the approval of more than half of the members of the council of governors of each applicant.” 20
- (3) In subsection (2) of that section, omit –
 - (a) paragraph (a),
 - (b) paragraph (c) (but not the “and” following it), and
 - (c) the words from “and must give” to the end. 25
- (4) Omit subsection (3) of that section.
- (5) For subsection (4) of that section substitute –
“(4) The regulator must grant the application if it is satisfied that such steps as are necessary to prepare for the dissolution of the trusts and the establishment of the proposed new trust have been taken.” 30
- (6) Omit subsections (5) to (10) of that section.
- (7) In subsection (11) of that section, for “On an authorisation being given under this section” substitute “On the grant of the application”.

154 Acquisitions

After section 56 of the National Health Service Act 2006 insert – 35

“56A Acquisitions

- (1) An application may be made jointly by –
 - (a) an NHS foundation trust (A), and

- (b) another NHS foundation trust or an NHS trust (B),
to the regulator for the acquisition by A of B.
- (2) An application under this section may be made only with the approval of more than half of the members of the council of governors of each applicant. 5
- (3) The application must be accompanied by a copy of the proposed constitution of A, amended on the assumption that A acquires B.
- (4) The regulator must grant the application if it is satisfied that such steps as are necessary to prepare for the acquisition have been taken.
- (5) On the grant of the application, the proposed constitution has effect, but where a person who is specified as a director of A in the constitution has yet to be appointed as such, the directors of A may exercise that person’s functions under the constitution.” 10
- 155 Separations**
- After section 56A of the National Health Service Act 2006 insert – 15
- “56B Separations**
- (1) An application may be made to the regulator by an NHS foundation trust for the dissolution of the trust and the establishment of two or more new NHS foundation trusts.
- (2) An application under this section may be made only with the approval of more than half of the members of the council of governors of the applicant. 20
- (3) The application must, by reference to each of the proposed new trusts –
- (a) specify the property and liabilities proposed to be transferred to it; 25
- (b) be accompanied by a copy of its proposed constitution.
- (4) The regulator must grant the application if it is satisfied that such steps as are necessary to prepare for the dissolution of the trust and the establishment of each of the proposed new trusts have been taken.
- (5) On the grant of the application, the proposed constitution of each of the new trusts has effect but, in the case of each of the new trusts, the proposed directors may exercise the functions of the trust on its behalf until a board of directors is appointed in accordance with the constitution.” 30
- 156 Dissolution** 35
- After section 57 of the National Health Service Act 2006 insert –
- “57A Dissolution**
- (1) An application may be made by an NHS foundation trust to the regulator for dissolution.
- (2) The regulator must grant the application if it is satisfied that – 40
- (a) the trust has no liabilities, and

- (b) such steps as are necessary to prepare for the dissolution have been taken.
- (3) Where an application under this section is granted, the regulator must make an order –
 - (a) dissolving the trust in question, and
 - (b) transferring, or providing for the transfer of, the property of the trust (if any) to the Secretary of State.”

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157 Supplementary

- (1) In section 57 of the National Health Service Act 2006 (mergers: supplementary), in subsection (1) –
 - (a) for “an authorisation is given under section 56” substitute “an application is granted under section 56 or 56B”, and
 - (b) at the end insert “or trusts”.
- (2) In subsection (2) of that section –
 - (a) for “such an authorisation is given, the Secretary of State” substitute “such an application is granted, the regulator”, and
 - (b) in paragraph (a), after “dissolving the” insert “trust or”.
- (3) After that subsection insert –

“(2A) An order under section 56 or 56B is conclusive evidence of incorporation and conclusive evidence that the corporation is an NHS foundation trust.”
- (4) In subsection (3)(a) of that section, for “section 54(3)” substitute “section 54(4)”.
- (5) In subsection (4) of that section –
 - (a) for “section 56(1) and (2)” substitute “sections 56(2) and 56B(3)”, and
 - (b) for “section 54(4)(a) to (c)” substitute “section 54(4)(a) or (c)”.
- (6) In subsection (5) of that section, after “section 56” insert “or 56A”.
- (7) Omit subsection (6) of that section.
- (8) For the title to that section substitute “Sections 56 to 56B: supplementary”.
- (9) For the cross-heading preceding section 56 of that Act substitute “Mergers, acquisitions and separations”.
- (10) In section 64 of that Act (orders and regulations under Chapter 5 of Part 2 of that Act), in subsection (4) –
 - (a) omit the “or” immediately after paragraph (b), and
 - (b) after paragraph (c), insert “, or
“(d) section 57A.”
- (11) After that subsection insert –

“(4A) The Statutory Instruments Act 1946 applies in relation to the power of the regulator to make an order under section 57 or 57A as if the regulator were a Minister of the Crown.”

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*Failure***158 Repeal of de-authorisation provisions**

- (1) Omit section 52C of the National Health Service Act 2006 (guidance etc. on de-authorisation notices).
- (2) In section 53 of that Act (voluntary arrangements), in subsection (4A), for “sections 52B to 52E and Chapter 5A do” substitute “Chapter 5A does”. 5
- (3) Omit section 65E of that Act (NHS foundation trusts: de-authorisation and appointment of administrator).
- (4) Omit Schedule 8A to that Act (de-authorised NHS trusts and NHS foundation trusts). 10
- (5) Omit section 15 of the Health Act 2009 (which inserts sections 52A to 52E and Schedule 8A in the National Health Service Act 2006).
- (6) In section 272 of the National Health Service Act 2006 (orders, regulations, rules and directions) –
 - (a) in subsection (5), omit paragraph (aa), and
 - (b) in subsection (6A), omit “52D(1), 52E(6),”. 15
- (7) In section 275(1) of that Act (interpretation), in the definition of “NHS trust” –
 - (a) omit “, subject to Schedule 8A,”, and
 - (b) omit “52D(1) or”.
- (8) In section 206(1) of the National Health Service (Wales) Act 2006, in the definition of “NHS trust”, omit “52D(1) or”. 20

159 Trust special administrators

- (1) In section 65A of the National Health Service Act 2006 (bodies to which trust special administration regime applies) –
 - (a) in subsection (1), for paragraphs (b) and (c) substitute – 25
 - “(b) any NHS foundation trust.”, and
 - (b) omit subsection (2).
- (2) In section 65D of that Act (NHS foundation trusts: regulator’s notice), for subsections (1) to (3) substitute –
 - “(1) This section applies if the regulator is satisfied that an NHS foundation trust is, or is likely to become, unable to pay its debts. 30
 - (2) The regulator may make an order authorising the appointment of a trust special administrator to exercise the functions of the governors, chairman and directors of the trust.”
- (3) In subsection (4) of that section – 35
 - (a) for “giving a notice” substitute “making an order”,
 - (b) after paragraph (a) insert –
 - “(aa) the National Health Service Commissioning Board,”, and
 - (c) omit paragraph (b) (but not the “and” following it). 40

- (4) After that subsection insert—
- “(5) An order under subsection (2) 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.
 - (6) The regulator must lay before Parliament (with the statutory instrument containing the order) a report stating the reasons for making the order. 5
 - (7) If the regulator makes an order under subsection (2), it must—
 - (a) appoint a person as the trust special administrator with effect from the day specified in the order, and 10
 - (b) publish the name of the person appointed.
 - (8) A person appointed as a trust special administrator under this section holds and vacates office in accordance with the terms of the appointment.
 - (9) When the appointment of a trust special administrator under this section takes effect, the trust’s governors, chairman and executive and non-executive directors are suspended from office; and Chapter 5 of this Part, in its application to the trust, is to be read accordingly. 15
 - (10) But subsection (9) does not affect the employment of the executive directors or their membership of any committee or sub-committee of the trust. 20
 - (11) The Secretary of State may indemnify a trust special administrator appointed under this section in respect of such matters as the Secretary of State may determine.”
- (5) For the title to that section substitute “NHS foundation trusts: appointment of trust special administrator” 25
- (6) Omit the cross-heading preceding that section.

160 Procedure etc.

- (1) In section 65F of the National Health Service Act 2006 (administrator’s draft report), in subsection (2), for paragraph (a) substitute— 30
 - “(a) the Board,”.
- (2) At the end of that section insert—
 - “(4) For the purposes of this section in its application to the case of an NHS foundation trust, the references to the Secretary of State are to be read as references to the regulator.” 35
- (3) In section 65H of that Act (consultation requirements), in subsection (7), for paragraph (a) substitute—
 - “(a) the Board,”.
- (4) In subsection (8) of that section, for paragraphs (a) to (d) substitute—
 - “(a) any local authority which arranges for the provision of services by the trust or to which the trust provides services,”. 40

- (5) At the end of that section insert –
- “(12) For the purposes of this section in its application to the case of an NHS foundation trust, the references to the Secretary of State are to be read as references to the regulator.”
- (6) At the end of section 65I of that Act (administrator’s final report) insert – 5
- “(4) For the purposes of this section in its application to the case of an NHS foundation trust, the references to the Secretary of State are to be read as references to the regulator.”
- (7) At the end of section 65J of that Act (power to extend time limits for preparing reports and carrying out consultation) insert – 10
- “(5) For the purposes of this section in its application to the case of an NHS foundation trust, the references to the Secretary of State are to be read as references to the regulator.”
- 161 Action following final report**
- (1) At the end of section 65K of the National Health Service Act 2006 (Secretary of State’s decision on what action to take) insert – 15
- “(3) For the purposes of subsections (1) and (2) in their application to the case of an NHS foundation trust, the references to the Secretary of State are to be read as references to the regulator.
- (4) The regulator may, in the case of an NHS foundation trust, make an order – 20
- (a) dissolving the trust, and
- (b) transferring, or providing for the transfer of, the property and liabilities of the trust to –
- (i) another NHS foundation trust, or 25
- (ii) the Secretary of State.
- (5) Before making an order under subsection (4), the regulator must obtain the consent of the Secretary of State.
- (6) Where the Secretary of State refuses consent, the regulator must within the period of 20 working days beginning with the day on which the regulator receives written notification of the Secretary of State’s refusal, decide on alternative action to take in relation to the trust. 30
- (7) The liabilities that may be transferred by virtue of subsection (4)(b)(i) include criminal liabilities.
- (8) An order under subsection (4) may include provisions corresponding to those in Schedule 9.” 35
- (2) In section 65L of that Act (trusts coming out of administration), after subsection (2) insert –
- “(2A) For the purposes of subsections (1) and (2) in their application to the case of an NHS foundation trust – 40
- (a) the references to the Secretary of State are to be read as references to the regulator, and

- (b) the reference to the chairman and directors of the trust is to be read as including a reference to the governors.”
- (3) Omit subsections (3) to (5) of that section.
- (4) At the end of that section insert –
 - “(6) Subsection (7) applies in the case of an NHS foundation trust. 5
 - (7) If it appears to the regulator to be necessary in order to comply with Schedule 7, the regulator may by order –
 - (a) terminate the office of any governor or of any executive or non-executive director of the trust;
 - (b) appoint a person to be a governor or an executive or non-executive director of the trust.” 10

162 Sections 159 to 161: supplementary

- (1) At the end of section 65M of the National Health Service Act 2006 (replacement of trust special administrator) insert –
 - “(3) For the purposes of this section in its application to the case of an NHS foundation trust, the references to the Secretary of State are to be read as references to the regulator.” 15
- (2) At the end of section 65N of that Act (power to issue guidance) insert –
 - “(4) For the purposes of this section in its application to cases of NHS foundation trusts, the reference in subsection (1) to the Secretary of State is to be read as a reference to the regulator.” 20
- (3) In section 65O of that Act (interpretation of Chapter 5A), in the definition of “trust special administrator”, after “65B(6)(a)” insert “, section 65D(2)”.
- (4) In section 39 of that Act (register of NHS foundation trusts), in subsection (2), at the end insert “, 25
 - (g) a copy of any order made under section 65D, 65J, 65K or 65L,
 - (h) a copy of any report laid under section 65D,
 - (i) a copy of any draft report published under section 65F,
 - (j) a copy of any statement under section 65G,
 - (k) a copy of any notice published under section 65H, 65J or 65K, 30
 - (l) a copy of any final report published under section 65I,
 - (m) a copy of any statement published under section 65J,
 - (n) a copy of any information published under section 65M.”
- (5) In section 272 of that Act (orders etc.), in subsection (5), in paragraph (ab) –
 - (a) after “65B(1),” insert “65D(2),” 35
 - (b) omit “65E(1),”
 - (c) after “65J(2),” insert “65K(4),” and
 - (d) for “or (5)” substitute “, (5) or (7)”.
- (6) After that subsection insert –
 - “(6ZA) The Statutory Instruments Act 1946 applies in relation to the power of the regulator to make an order under Chapter 5A as if the regulator were a Minister of the Crown.” 40

- (7) In subsection (6A) of that section –
- (a) after “65B(1),” insert “65D(2),”
 - (b) omit “65E(1),”
 - (c) after “65J(2),” insert “65K(4),” and
 - (d) for “or (4)” substitute “, (4) or (7)”. 5
- (8) In section 275(1) of that Act (interpretation), in the definition of “NHS trust”, omit the words from “and” to the end.
- (9) In paragraph 22(1) of Schedule 7 to that Act (documents which must be made available to the public free of charge), at the end insert “,
- (g) a copy of any order made under section 65D, 65J, 65K or 65L, 10
 - (h) a copy of any report laid under section 65D,
 - (i) a copy of any draft report published under section 65F,
 - (j) a copy of any statement under section 65G,
 - (k) a copy of any notice published under section 65H, 65J or 65K,
 - (l) a copy of any final report published under section 65I, 15
 - (m) a copy of any statement published under section 65J,
 - (n) a copy of any information published under section 65M.”
- (10) In section 206(1) of the National Health Service (Wales) Act 2006, in the definition of “NHS trust”, omit the words from “(including” to the end.
- 163 Repeal of Chapter 5A of Part 2 of the National Health Service Act 2006** 20
- (1) Chapter 5A of Part 2 of the National Health Service Act 2006 is repealed on –
- (a) the commencement of the first regulations under section 55A of that Act and the first regulations under section 116 of this Act that make provision for cases involving NHS foundation trusts, or
 - (b) where the regulations come into force on different days, on whichever commencement occurs first. 25
- (2) In consequence of subsection (1), the following are also repealed on the commencement of the repeal of Chapter 5A of Part 2 of that Act –
- (a) section 39(2)(g) to (m) of that Act,
 - (b) section 272(2)(ab) and (6A) of that Act, 30
 - (c) sections 159 to 162 and 167(5) of this Act.

Abolition of NHS trusts

164 Abolition of NHS trusts in England

- (1) The NHS trusts established under section 25 of the National Health Service Act 2006 are abolished. 35
- (2) Chapter 3 of Part 2 of that Act (NHS trusts) is repealed.
- (3) This section and section 165 come into force on 1 April 2014.
- (4) The Secretary of State may by order substitute another date for the date for the time being specified in subsection (3).

- (5) Where arrangements under which a person exercises (or is to exercise) functions on behalf of an NHS trust are in force immediately before the commencement of this section –
- (a) the trust is to continue after that commencement to be constituted as an NHS trust until the arrangements come to an end, and 5
 - (b) despite subsection (2), Chapter 3 of Part 2 of the National Health Service Act 2006 is to continue to have effect so far as necessary for the purposes of the arrangements.
- (6) Schedule 12 (which contains consequential amendments) has effect.
- 165 Repeal of provisions on authorisation for NHS foundation trusts 10**
- (1) Omit section 33 of the National Health Service Act 2006 (application by NHS trust for authorisation).
 - (2) Omit section 35 of that Act (authorisation of NHS foundation trust).
 - (3) Omit section 36(1), (3) and (4) of that Act (NHS trust to become NHS foundation trust on being given authorisation but retain liabilities). 15
 - (4) For the title to section 36 of that Act substitute “Status etc. of NHS foundation trusts”.
 - (5) For the cross-heading preceding section 33 of that Act substitute “Status etc. of NHS foundation trusts”.
 - (6) Omit paragraph 19 of Schedule 7 to that Act (initial directors of former NHS trust). 20
 - (7) Despite the preceding provisions of this section, sections 33, 35 and 36(1), (3) and (4) of, and paragraph 19 of Schedule 7 to, that Act continue to have effect in the case of an NHS trust continuing in existence by virtue of section 164(5).
 - (8) The repeal by subsection (3) section 36(4) of that Act does not affect the continuity of anything continuing by virtue of that provision immediately before the commencement of this section. 25

PART 5

PUBLIC INVOLVEMENT AND LOCAL GOVERNMENT

CHAPTER 1 30

PUBLIC INVOLVEMENT

Healthwatch England

166 Healthwatch England

- (1) The Health and Social Care Act 2008 is amended as follows.
- (2) In Schedule 1 (the Care Quality Commission: constitution, etc.), in paragraph 35

6, after sub-paragraph (1) insert –

- “(1A) A committee of the Commission known as “the Healthwatch England committee” is to be appointed in accordance with regulations.
- (1B) The purpose of the Healthwatch England committee is to provide the Commission or other persons with advice or assistance in accordance with provision made by or under this or any other Act. 5
- (1C) The provision that may be made by virtue of sub-paragraph (1A) includes provision as to –
- (a) the removal or suspension of members of the committee; 10
- (b) the payment of remuneration and allowances to members.”
- (3) In sub-paragraph (4) of that paragraph, after “advisory committee” insert “, the Healthwatch England committee”.
- (4) In Chapter 3 of Part 1 (quality of health and social care), before section 46 and the preceding cross-heading insert – 15

“Advice given by Healthwatch England

45A Functions to be exercised by Healthwatch England

- (1) The Commission has the functions set out in subsections (2) and (3), but must arrange for the Healthwatch England committee to exercise the functions on its behalf. 20
- (2) The function in this subsection is to provide Local Healthwatch organisations with advice on and assistance in relation to –
- (a) the making of arrangements under or in pursuance of section 221(1) of the Local Government and Public Involvement in Health Act 2007 (local care services); 25
- (b) the carrying on by the organisations of activities specified in section 221(2) of that Act.
- (3) The function in this subsection is to provide the persons mentioned in subsection (4) with information and advice on –
- (a) the views of people who use health or social care services and of other members of the public on their needs for and experiences of health and social care services, and 30
- (b) the views of Local Healthwatch organisations and of other persons on the standard of provision of health and social care services and on whether or how the standard could or should be improved. 35
- (4) The persons referred to in subsection (3) are –
- (a) the Secretary of State;
- (b) the National Health Service Commissioning Board;
- (c) Monitor; 40
- (d) English local authorities.
- (5) A person provided with advice under subsection (3) must inform the Healthwatch England committee in writing of its response or proposed response to the advice.

- (6) The Healthwatch England committee may provide the Commission with advice on the matters mentioned in subsection (3)(a) and (b).
- (7) The Commission must publish details of arrangements it makes under subsection (1) (including details of payments of remuneration or other amounts); and inclusion of the details in a report under section 83 is not to be regarded as a discharge of the duty imposed by this subsection. 5
- (8) In performing functions under this section, the Healthwatch England committee must have regard to such aspects of government policy as the Secretary of State may direct.
- 45B Reports** 10
- (1) As soon as possible after the end of each financial year, the Healthwatch England committee –
- (a) must make a report to the Commission (whether or not in writing) on the matters mentioned in section 45A(3)(a) and (b), and 15
- (b) must publish a report on the way in which it has exercised its functions during the year.
- (2) The committee must –
- (a) lay before Parliament a copy of each report made under subsection (1)(b), and 20
- (b) send a copy of each such report to the Secretary of State.
- (3) The committee may publish other reports at such times, and on such matters relating to health or social care, as it thinks appropriate.
- (4) Before publishing a report under subsection (1)(b), the committee must, so far as practicable, exclude any matter which relates to the private affairs of an individual the publication of which, in the committee’s opinion, would or might seriously and prejudicially affect that individual’s interests. 25
- (5) In this section, “financial year” means –
- (a) the period beginning with the date on which the committee is appointed and ending with the following 31 March, and 30
- (b) each successive period of 12 months ending with 31 March.”
- (5) In section 82 (failure by Commission to discharge functions), after subsection (1) insert –
- “(1A) The Secretary of State may give a direction to the Healthwatch England committee if the Secretary of State considers that the committee – 35
- (a) is failing or has failed to discharge a function under section 45A or any other function it is required to discharge, or
- (b) is failing or has failed properly to discharge a function under that section or any other such function.” 40
- (6) In subsection (2) of that section –
- (a) after “(1)” insert “or (1A)”, and
- (b) after “the Commission” insert “or (as the case may be) the committee”.
- (7) In subsection (3) of that section –
- (a) after “the Commission” insert “or the committee”, and 45

- (b) after “(1)” insert “or (1A)”.
- (8) In section 83 (reports for each financial year etc), after subsection (1) insert –
 “(1A) The reference in subsection (1)(a) to the Commission’s functions does not include a reference to its functions under section 45A.”
- (9) After subsection (2) of that section insert – 5
 “(2A) The reports under subsection (1)(b) and (c) must, in particular, set out (and identify as such) the contents of the report made by the Healthwatch England committee under section 45B(1)(a) in respect of the year concerned.”
- Local Healthwatch organisations* 10
- 167 Establishment and constitution**
- (1) Part 14 of the Local Government and Public Involvement in Health Act 2007 (patient and public involvement in health and social care) is amended as follows.
- (2) For the cross-heading preceding section 221 substitute “Local Healthwatch organisations” 15
- (3) Before that section (but after that cross-heading) insert –
“220A Local Healthwatch organisations
- (1) There is to be a body known as a Local Healthwatch organisation for the area of each local authority, the main purpose of which is to carry on activities in that area in accordance with this Part. 20
- (2) Schedule 16A (further provision about Local Healthwatch organisations) has effect.”
- (4) After Schedule 16, insert the Schedule 16A set out in Schedule 13 to this Act.
- (5) In section 65H of the National Health Service Act 2006 (de-authorisation of NHS foundation trusts: consultation requirements), in subsection (8)(e) – 25
 (a) before “in pursuance of” insert “under or”, and
 (b) for “local involvement networks” substitute “Local Healthwatch organisations”.
- (6) In section 4 of the Health and Social Care Act 2008 (matters to which the Care Quality Commission must have regard) – 30
 (a) in subsection (1)(c), for “local involvement networks” substitute “Local Healthwatch organisations”, and
 (b) omit subsection (3).
- 168 Activities relating to local care services** 35
- (1) Section 221 of the Local Government and Public Involvement in Health Act 2007 (health services and social services) is amended as follows.
- (2) In subsection (2), omit the “and” preceding paragraph (d).

- (3) After that paragraph insert –
- “(e) providing advice and information about access to local care services and about choices that may be made with respect to aspects of those services;
 - (f) reaching views on the matters mentioned in subsection (3) and making those views known to the Healthwatch England committee of the Care Quality Commission; 5
 - (g) making recommendations to that committee to advise the Commission about special reviews or investigations to conduct (or, where the circumstances justify doing so, making such recommendations direct to the Commission); and 10
 - (h) giving that committee such assistance as it may require to enable it to carry out its functions effectively, efficiently and economically.”
- (4) In subsection (3), after “(2)(b)” insert “and (f)”. 15
- (5) For the title to section 221 substitute “Health services and social services: local arrangements”.

169 Local authority arrangements

- (1) Section 222 of the Local Government and Public Involvement in Health Act 2007 (arrangements under section 221 of that Act) is amended as follows. 20
- (2) For subsection (2) substitute –
- “(2) The arrangements must secure that the Local Healthwatch organisation for A’s area, under or in pursuance of the arrangements, carries on in A’s area activities specified in section 221(2) for that area.”
- (3) In subsection (3), for “a person (“H”)” substitute “a Local Healthwatch organisation or with a person”. 25
- (4) Omit subsection (4).
- (5) For subsection (5) substitute –
- “(5) The arrangements may (in particular) make provision as respects co-operation between the Local Healthwatch organisation for the area and one or more other Local Healthwatch organisations.” 30
- (6) After subsection (7) insert –
- “(7A) A must exercise its functions under this Part so as to secure that the arrangements – 35
 - (a) operate effectively, and
 - (b) represent value for money.
 - (7B) A must publish a report of its findings in seeking to secure the objective mentioned in subsection (7A).”
- (7) Omit subsection (8).
- (8) Section 223 of that Act (power to make further provision about local authority arrangements) is amended as follows. 40
- (9) In subsection (1) –

-
- (a) after the second “must” insert “ –
 (a) include prescribed provision, or
 (b) ”, and
- (b) for “local involvement network arrangements” substitute “Local Healthwatch arrangements”. 5
- (10) In subsection (2) –
 (a) after “must” insert “include or”,
 (b) for “local involvement network arrangements” substitute “Local Healthwatch arrangements”, and
 (c) in paragraphs (a), (c) and (d), for “a local involvement network” substitute “a Local Healthwatch organisation”. 10
- (11) In subsection (3) –
 (a) omit the definition of “a local involvement network”, and
 (b) for the definition of “local involvement network arrangements” substitute – 15
 ““Local Healthwatch arrangements”, in relation to local authority arrangements, means arrangements made in pursuance of the local authority arrangements.”
- 170 Independent advocacy services**
- (1) After section 223 of the Local Government and Public Involvement in Health Act 2007 insert – 20
- “223A Independent advocacy services**
- (1) Each local authority must make such arrangements as it considers appropriate for the provision of independent advocacy services.
- (2) In this section, “independent advocacy services” means services providing assistance (by way of representation or otherwise) to persons making or intending to make – 25
- (a) a complaint under a procedure operated by a health service body or independent provider;
- (b) a complaint under section 113(1) or (2) of the Health and Social Care (Community Health and Standards) Act 2003; 30
- (c) a complaint to the Health Service Commissioner for England or the Public Service Ombudsman for Wales; or
- (d) a complaint of such description as the Secretary of State may by regulations prescribe which relates to the provision of services as part of the health service and – 35
- (i) is made under a procedure of a description prescribed in the regulations, or
- (ii) gives rise, or may give rise, to proceedings of a description prescribed in the regulations. 40
- (3) Where arrangements under this section provide for the Local Healthwatch organisation for the authority’s area to provide the services or to arrange for their provision, the arrangements are to be treated for the purposes of this Part as arrangements made under section 221(1). 45

- (4) Each local authority may make such other arrangements as it considers appropriate for the provision of assistance to individuals in connection with complaints relating to the provision of services as part of the health service.
- (5) In making arrangements under this section, a local authority must have regard to the principle that the provision of services under the arrangements should, so far as practicable, be independent of any person who is –
- (a) the subject of a relevant complaint; or
 - (b) involved in investigating or adjudicating on such a complaint.
- (6) A local authority may make payments to any person providing services under or in pursuance of arrangements under this section; but this subsection does not apply in relation to the Local Healthwatch organisation for the authority’s area (to which, by virtue of subsection (3)), payment may be made under section 222(6)).
- (7) The Secretary of State may by regulations make provision requiring a person providing services under or in pursuance of arrangements under this section to have cover against the risk of a claim in negligence arising out of the provision of the services.
- (8) In this section –
- “the health service” has the same meaning as in the National Health Service Act 2006;
 - “health service body” means –
 - (a) in relation to England, a body which, under section 2(1) of the Health Service Commissioners Act 1993, is subject to investigation by the Health Service Commissioner for England;
 - (b) in relation to Wales, a Welsh health service body (within the meaning of the Public Services Ombudsman (Wales) Act 2005);
 - “independent provider” means –
 - (a) in relation to England, a person who, under section 2B(1) of the Health Service Commissioners Act 1993, is subject to investigation by the Health Service Commissioner for England;
 - (b) in relation to Wales, a person who is an independent provider in Wales (within the meaning of the Public Services Ombudsman (Wales) Act 2005).”
- (2) Omit section 248 of the National Health Service Act 2006 (arrangements by the Secretary of State for the provision of independent advocacy arrangements).
- (3) In section 134 of the Mental Health Act 1983 (correspondence of patients), in subsection (3A)(b)(ii), for “section 248 of the National Health Service Act 2006” substitute “section 223A of the Local Government and Public Involvement in Health Act 2007”.
- (4) In section 59 of the Safeguarding Vulnerable Groups Act 2006 (vulnerable adults), in subsection (10)(e), for “section 248 of the National Health Service Act 2006 (c. 41)” substitute “section 223A of the Local Government and Public Involvement in Health Act 2007”.

171 Requests, rights of entry and referrals

- (1) Section 224 of the Local Government and Public Involvement in Health Act 2007 (duties of services-providers to respond to requests for information etc.) is amended as follows.
- (2) In subsection (1), in paragraphs (a) and (b), for “a local involvement network” substitute “a Local Healthwatch organisation” 5
- (3) For subsection (3) substitute –
 - “(3) For the purposes of subsection (1), something is done by a Local Healthwatch organisation if it is done by that organisation in the carrying-on, under or in pursuance of arrangements made under section 221(1), of activities specified in section 221(2).” 10
- (4) For the title to that section substitute “Duties of services-providers to respond to Local Healthwatch organisations”.
- (5) Section 225 of that Act (duties of services-providers to allow entry to premises) is amended as follows. 15
- (6) In subsection (2), in paragraph (f), and in subsection (5), for “a local involvement network” substitute “a Local Healthwatch organisation”.
- (7) Omit subsection (6).
- (8) For the title to that section substitute “Duties of services-providers to allow entry by Local Healthwatch organisations” 20
- (9) Section 226 of that Act (referrals of social care matters) is amended as follows.
- (10) In subsections (1) and (5), for “a local involvement network” substitute “a Local Healthwatch organisation”.
- (11) For subsection (7) substitute –
 - “(7) For the purposes of this section, something is done by a Local Healthwatch organisation if it is done by that organisation in the carrying-on, under or in pursuance of arrangements made under section 221(1), of activities specified in section 221(2).” 25
- (12) For the title to that section substitute “Referrals of social care matters”.

172 Dissolution and transfer schemes 30

- (1) After section 226 of the Local Government and Public Involvement in Health Act 2007 insert –

“226A Dissolution and transfer schemes

- (1) The Secretary of State may, whether on an application by the Healthwatch England committee and a local authority or on the Secretary of State’s own initiative, by order dissolve the Local Healthwatch organisation for the authority’s area if the Secretary of State is satisfied that the circumstances require dissolution. 35
- (2) The Secretary of State may, in a case of dissolution by virtue of subsection (1), make a scheme for the transfer of property, rights and liabilities to the body established in consequence of section 220A as the Local Healthwatch organisation for the area concerned. 40

- (3) A scheme under this section may make provision for rights and liabilities relating to an individual’s contract of employment; and the scheme may, in particular, make provision which is the same or similar to provision in the Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246). 5
- (4) A scheme under this section may provide for the transfer of property, rights and liabilities –
- (a) whether or not they would otherwise be capable of being transferred or assigned;
 - (b) irrespective of any requirement for consent that would otherwise apply. 10
- (5) A scheme under this section may create rights, or impose liabilities, in relation to property, rights and liabilities transferred by virtue of the scheme.
- (6) A scheme under this section may provide for things done by or in relation to the transferor for the purposes of or in connection with anything transferred by the scheme to be –
- (a) treated as done by or in relation to the transferee or its employees;
 - (b) continued by or in relation to the transferee or its employees. 20
- (7) A scheme under this section may in particular make provision about continuation of legal proceedings.
- (8) A scheme under this section may include supplementary, incidental and consequential provision.
- (9) In this section, “the Healthwatch England committee” means the Healthwatch England committee of the Care Quality Commission.” 25
- (2) In section 240(7) (orders not subject to Parliamentary procedure) –
- (a) omit the “or” following paragraph (a), and
 - (b) after that paragraph insert –
“(aa) an order under section 226A, or”. 30

173 Annual reports

- (1) Section 227 of the Local Government and Public Involvement in Health Act 2007 (annual reports) is amended as follows.
- (2) In subsection (2), after “by a local authority with” insert “a Local Healthwatch organisation or with”. 35
- (3) In that subsection, in paragraph (a) –
- (a) in sub-paragraph (i) –
 - (i) after “requiring” insert “(whether the arrangements are made with a Local Healthwatch organisation or with H)”,
 - (ii) for “local involvement network” substitute “Local Healthwatch organisation”, 40
 - (iii) for “the network”, in each place it appears, substitute “the organisation”, and
 - (iv) after “carried on” insert “under or (as the case may be)”,
 - (b) after that sub-paragraph insert “and”, 45

- (c) in sub-paragraph (ii) –
 - (i) after “requiring” insert “(where the arrangements are made with H)”,
 - (ii) for “local involvement network” substitute “Local Healthwatch organisation”, and 5
 - (iii) for “the network” substitute “the organisation”, and
- (d) omit sub-paragraph (iii) and the preceding “and”.
- (4) In subsection (3) –
 - (a) after paragraph (a) insert “and”,
 - (b) in paragraph (b) – 10
 - (i) omit the words from “, if it is” to “(2)(a)(ii),”, and
 - (ii) in sub-paragraph (i), for “H in respect of the network” substitute “the Local Healthwatch organisation or H in respect of the organisation”, and
 - (c) omit paragraph (c) and the preceding “and”. 15
- (5) In subsection (4), after paragraph (ca) insert –
 - “(cb) the Healthwatch England committee of the Care Quality Commission;”.
- (6) In subsection (5) –
 - (a) in paragraph (a) – 20
 - (i) omit the words from the beginning to “(2)(a)(ii),”,
 - (ii) for “the network” substitute “the Local Healthwatch organisation”, and
 - (iii) after “carried on” insert “under or”, and
 - (b) omit paragraph (b) and the “and” preceding it. 25
- (7) Omit subsections (6) to (8).
- (8) For the title to section 227 substitute “Local Healthwatch organisations: annual reports”.

174 Transitional arrangements

- (1) This section applies where arrangements made under section 221 of the Local Government and Public Involvement in Health Act 2007 (“the 2007 Act”) before the commencement of this Chapter provide for the arrangements to come to an end at a time that falls after that commencement. 30
- (2) The Secretary of State may make a scheme providing for the transfer from the person with whom the local authority in question made the arrangements of property, rights and liabilities to the body established in consequence of section 220A of the 2007 Act as the Local Healthwatch organisation for the local authority’s area. 35
- (3) A scheme under this section may include any provision which may be made in a scheme under section 226A of the 2007 Act (inserted by section 172). 40
- (4) A scheme under this section may include provision requiring the local authority to pay compensation to the transferor; and for that purpose the scheme may –
 - (a) impose a duty on the local authority to determine the amount of the compensation; 45

- (b) confer power on the Secretary of State to do so.

CHAPTER 2

LOCAL GOVERNMENT

Scrutiny functions of local authorities

- 175 Scrutiny functions of local authorities** 5
- (1) Section 244 of the National Health Service Act 2006 is amended as follows.
- (2) In subsection (2) –
- (a) omit “an overview and scrutiny committee of”,
 - (b) for “the committee” (in each place where it occurs) substitute “the authority”, 10
 - (c) for “local NHS bodies” (in each place where it occurs) substitute “relevant NHS bodies or relevant NHS providers”,
 - (d) for “local NHS body” (in each place where it occurs except paragraph (f)) substitute “relevant NHS body or relevant NHS provider”,
 - (e) omit the words in brackets in paragraph (c), and 15
 - (f) in subsection (f) for “any officer of a local NHS body” substitute “any member or employee of a relevant NHS body, or a relevant NHS provider or member or employee of a relevant NHS provider,”.
- (3) After subsection (2) insert –
- “(2ZA) If (by virtue of subsection (2)(c)) regulations make provision as to matters on which relevant NHS bodies or relevant NHS providers must consult the authority, the regulations may also make provision – 20
- (a) as to circumstances in which the authority may refer any of those matters to the Secretary of State, the regulator or the Board; 25
 - (b) conferring powers on the Secretary of State to give directions to the Board in relation to a matter referred to the Secretary of State by virtue of regulations under paragraph (a);
 - (c) conferring powers on the Board to give directions to a commissioning consortium in relation to a matter so referred; 30
 - (d) conferring powers on the Board to give directions to a commissioning consortium in relation to a matter referred to the Board by virtue of regulations under paragraph (a);
 - (e) conferring powers on the Secretary of State to give directions to the Board as to the exercise of its powers by virtue of regulations under paragraph (c) or (d). 35
- (2ZB) The powers that may be conferred under any of paragraphs (b) to (d) of subsection (2ZA) include powers to require the person to whom the direction is given – 40
- (a) to consult (or consult further) with the authority on the matter in question;
 - (b) to determine the matter in a particular way;
 - (c) to take, or not to take, any other steps in relation to the matter.

-
- (2ZC) If (by virtue of subsection (2ZA)(a)) regulations make provision for an authority to refer a matter to the Secretary of State, the regulator or the Board, the regulations may also provide for any provision of section 101 of the Local Government Act 1972—
- (a) not to apply in relation to the discharge by the authority of that function, or 5
 - (b) to apply in relation to its discharge with such modifications as may be prescribed.
- (2ZD) Regulations under this section may authorise a local authority to arrange for its functions under the regulations to be discharged by an overview and scrutiny committee of the authority.” 10
- (4) For subsection (3) substitute—
- “(3) For the purposes of subsections (2) and (2ZA)—
- “relevant NHS body” means an NHS body other than a Special Health Authority which is prescribed for those purposes in relation to the authority; 15
 - “relevant NHS provider” means a body or person which provides services under this Act in pursuance of arrangements made by the Board or a commissioning consortium and is prescribed, or is of a description prescribed, for those purposes in relation to the authority.” 20
- (5) After subsection (3) insert—
- “(3A) In subsection (2)(f) the reference to a member—
- (a) in relation to an NHS foundation trust, is to be read as a reference to a director of the trust, and 25
 - (b) in relation to a member that is a body includes a reference to any member or employee of the body.”
- (6) For the heading to section 244 substitute “Review and scrutiny by local authorities”.
- (7) For the title to Chapter 3 of Part 12 of the National Health Service Act 2006 substitute “Review and scrutiny by local authorities”. 30
- (8) In section 9F of the Local Government Act 2000 (overview and scrutiny committees) (as inserted by Schedule 2 to the Localism Act 2011)—
- (a) omit subsection (2)(f),
 - (b) omit subsection (3)(a) and (b), and 35
 - (c) in subsection (5) omit the word “or” following paragraph (b) and after paragraph (c) insert “or
 - (d) any functions which may be conferred on it by virtue of regulations under section 244(2ZD) of the National Health Service Act 2006 (local authority scrutiny of health matters).” 40

Joint strategic needs assessments and strategies

176 Joint strategic needs assessments

- (1) Section 116 of the Local Government and Public Involvement in Health Act 2007 (health and social care: joint strategic needs assessments) is amended as follows. 5
- (2) In subsection (4), for paragraph (b) substitute –
“(b) each of its partner commissioning consortia,”.
- (3) In subsection (6) –
 - (a) for “for which a partner PCT acts” substitute “for which a partner commissioning consortium is established”, 10
 - (b) for “the partner PCT” substitute “the partner commissioning consortium”, and
 - (c) after “a need” insert “or to be likely to be a need”.
- (4) In subsection (7) –
 - (a) in paragraph (a)(ii) for “the partner PCT” substitute “the partner commissioning consortium or the National Health Service Commissioning Board”, and 15
 - (b) in paragraph (b)(i) for “the partner PCT” substitute “the partner commissioning consortium or the National Health Service Commissioning Board”. 20
- (5) In subsection (8) for “each partner PCT” substitute “each of its partner commissioning consortia”.
- (6) After subsection (8) insert –
“(8A) In preparing an assessment under this section, the responsible local authority or a partner commissioning consortium may consult any person it thinks appropriate.” 25
- (7) In subsection (9) –
 - (a) for the definition of “partner PCT” substitute –
““partner commissioning consortium”, in relation to a responsible local authority, means any commissioning consortium established for an area which coincides with or falls wholly or partly within the area of the authority;”, and 30
 - (b) in the definition of “relevant district council”, in paragraph (b) –
 - (i) for “a partner PCT” substitute “a partner commissioning consortium”, and 35
 - (ii) for “the area for which the partner PCT acts” substitute “the area for which the commissioning consortium is established”.

177 Joint health and wellbeing strategies

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After section 116 of the Local Government and Public Involvement in Health

Act 2007 insert –

“116A Health and social care: joint health and wellbeing strategies

- (1) This section applies where an assessment of relevant needs is prepared under section 116 by a responsible local authority and each of its partner commissioning consortia. 5
- (2) The responsible local authority and each of its partner commissioning consortia must prepare a strategy for meeting the needs included in the assessment by the exercise of functions of the authority, the National Health Service Commissioning Board or the consortia (“a joint health and wellbeing strategy”). 10
- (3) In preparing a strategy under this section, the responsible local authority and each of its partner commissioning consortia must, in particular, consider the extent to which the needs could be met more effectively by the making of arrangements under section 75 of the National Health Service Act 2006 (rather than in any other way). 15
- (4) In preparing a strategy under this section, the responsible local authority and each of its partner commissioning consortia must have regard to the mandate published by the Secretary of State under section 13A of the National Health Service Act 2006.
- (5) The responsible local authority must publish each strategy prepared by it under this section. 20
- (6) The responsible local authority and each of its partner commissioning consortia may include in the strategy a statement of their views on how arrangements for the provision of health-related services in the area of the local authority could be more closely integrated with arrangements for the provision of health services and social care services in that area. 25
- (7) In this section and section 116B –
 - (a) “partner commissioning consortium”, in relation to a responsible local authority, has the same meaning as in section 116, and 30
 - (b) “health services”, “health-related services” and “social care services” have the same meanings as in section 179 of the Health and Social Care Act 2011.

116B Duty to have regard to assessments and strategies

- (1) A responsible local authority and each of its partner commissioning consortia must, in exercising any relevant functions, have regard to – 35
 - (a) the most recent assessment of relevant needs prepared by the responsible local authority and each of its partner commissioning consortia under section 116, and
 - (b) the most recent joint health and wellbeing strategy prepared by them under section 116A. 40
- (2) For the purposes of subsection (1), a function of a responsible local authority or a partner commissioning consortium is a relevant function if it could be exercised in a way that meets, or affects, to a significant extent a need included in the most recent assessment under section 116. 45

- (3) The National Health Service Commissioning Board must, in exercising any functions in arranging for the provision of health services in relation to the area of a responsible local authority, have regard to the documents mentioned in subsection (1)(a) and (b).”

Health and Wellbeing Boards: establishment

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178 Establishment of Health and Wellbeing Boards

- (1) A local authority must establish a Health and Wellbeing Board for its area.
- (2) The Health and Wellbeing Board is to consist of –
- (a) subject to subsection (4), at least one councillor of the local authority, nominated in accordance with subsection (3), 10
 - (b) the director of adult social services for the local authority,
 - (c) the director of children’s services for the local authority,
 - (d) the director of public health for the local authority,
 - (e) a representative of the Local Healthwatch Organisation for the area of the local authority, 15
 - (f) a representative of each relevant commissioning consortium, and
 - (g) such other persons, or representatives of such other persons, as the local authority thinks appropriate.
- (3) A nomination for the purposes of subsection (2)(a) must be made –
- (a) in the case of a local authority operating executive arrangements, by the elected mayor or the executive leader of the local authority; 20
 - (b) in any other case, by the local authority.
- (4) In the case of a local authority operating executive arrangements, the elected mayor or the executive leader of the local authority may, instead of or in addition to making a nomination under subsection (2)(a), be a member of the Board. 25
- (5) The Local Healthwatch Organisation for the area of the local authority must appoint one person to represent it on the Health and Wellbeing Board.
- (6) A relevant commissioning consortium must appoint a person to represent it on the Health and Wellbeing Board. 30
- (7) A person may, with the agreement of the Health and Wellbeing Board, represent more than one commissioning consortium on the Board.
- (8) The Health and Wellbeing Board may appoint such additional persons to be members of the Board as it thinks appropriate.
- (9) At any time after a Health and Wellbeing Board is established, a local authority must, before appointing another person to be a member of the Board under subsection (2)(g), consult the Health and Wellbeing Board. 35
- (10) A relevant commissioning consortium must co-operate with the Health and Wellbeing Board in the exercise of the functions of the Board.
- (11) A Health and Wellbeing Board is a committee of the local authority which established it and, for the purposes of any enactment, is to be treated as if it were a committee appointed by that authority under section 102 of the Local Government Act 1972. 40

- (12) But regulations may provide that any enactment relating to a committee appointed under section 102 of that Act of 1972 –
- (a) does not apply in relation to a Health and Wellbeing Board, or
 - (b) applies in relation to it with such modifications as may be prescribed in the regulations. 5
- (13) In this section –
- (a) “enactment” includes an enactment contained in subordinate legislation (within the meaning of the Interpretation Act 1978);
 - (b) “elected mayor”, “executive arrangements” and “executive leader”, in relation to a local authority, have the same meaning as in Part 1A of the Local Government Act 2000; 10
 - (c) “relevant commissioning consortium”, in relation to a local authority, means any commissioning consortium established for an area which coincides with or falls wholly or partly within the area of the local authority. 15
- (14) In this section and in sections 179 to 183, “local authority” means –
- (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; 20
 - (d) the Council of the Isles of Scilly;
 - (e) the Common Council of the City of London in its capacity as a local authority.

Health and Wellbeing Boards: functions

- 179 Duty to encourage integrated working** 25
- (1) A Health and Wellbeing Board must, for the purpose of advancing the health and wellbeing of the people in its area, encourage persons who arrange for the provision of any health or social care services in that area to work in an integrated manner.
- (2) A Health and Wellbeing Board must, in particular, provide such advice, assistance or other support as it thinks appropriate for the purpose of encouraging the making of arrangements under section 75 of the National Health Service Act 2006 in connection with the provision of such services. 30
- (3) A Health and Wellbeing Board may encourage persons who arrange for the provision of health-related services in its area to work closely with the Health and Wellbeing Board. 35
- (4) A Health and Wellbeing Board may encourage persons who arrange for the provision of any health or social care services in its area and persons who arrange for the provision of any health-related services in its area to work closely together. 40
- (5) Any reference in this section to the area of a Health and Wellbeing Board is a reference to the area of the local authority that established it.
- (6) In this section –
- “health services” means services that are provided as part of the health service; 45

“health-related services” means services that may have an effect on the health of individuals but are not health services or social care services;
“social care services” means services that are provided in pursuance of the social services functions of local authorities (within the meaning of the Local Authority Social Services Act 1970).

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180 Other functions of Health and Wellbeing Boards

- (1) The functions of a local authority and its partner commissioning consortia under sections 116 and 116A of the Local Government and Public Involvement in Health Act 2007 (“the 2007 Act”) are to be exercised by the Health and Wellbeing Board established by the local authority. 10
- (2) A local authority may arrange for a Health and Wellbeing Board established by it to exercise any other functions of the authority.
- (3) A Health and Wellbeing Board may give the local authority that established it its opinion on whether the authority is discharging its duty under section 116B of the 2007 Act. 15
- (4) The power conferred by subsection (2) does not apply to the functions of the authority by virtue of section 244 of the National Health Service Act 2006.

Health and Wellbeing Boards: supplementary

181 Participation of NHS Commissioning Board

- (1) Subsection (2) applies where a Health and Wellbeing Board is (by virtue of section 180(1)) preparing – 20
 - (a) an assessment of relevant needs under section 116 of the Local Government and Public Involvement in Health Act 2007, or
 - (b) a strategy under section 116A of that Act.
- (2) The National Health Service Commissioning Board must appoint a representative to join the Health and Wellbeing Board for the purpose of participating in its preparation of the assessment or (as the case may be) the strategy. 25
- (3) Subsection (4) applies where a Health and Wellbeing Board is considering a matter that relates to the exercise or proposed exercise of the commissioning functions of the National Health Service Commissioning Board in relation to the authority’s area. 30
- (4) If the Health and Wellbeing Board so requests, the National Health Service Commissioning Board must appoint a representative to join the Health and Wellbeing Board for the purpose of participating in its consideration of the matter. 35
- (5) The person appointed under subsection (2) or (4) may, with the agreement of the Health and Wellbeing Board, be a person who is not a member or employee of the National Health Service Commissioning Board.
- (6) In this section, “commissioning functions”, in relation to the National Health Service Commissioning Board, means the functions of the Board in arranging for the provision of services as part of the health service in England. 40

182 Discharge of functions of Health and Wellbeing Boards

Two or more Health and Wellbeing Boards may make arrangements for –

- (a) any of their functions to be exercisable jointly;
- (b) any of their functions to be exercisable by a joint sub-committee of the Boards; 5
- (c) a joint sub-committee of the Boards to advise them on any matter related to the exercise of their functions.

183 Supply of information to Health and Wellbeing Boards

- (1) A Health and Wellbeing Board may, for the purpose of enabling or assisting it to perform its functions, request any of the following persons to supply it with such information as may be specified in the request – 10
 - (a) the local authority that established the Health and Wellbeing Board;
 - (b) any person who is represented on the Health and Wellbeing Board by virtue of section 178(2)(e) to (g) or (9);
 - (c) any person who is a member of a Health and Wellbeing Board by virtue of section 178(2)(g) or (9) but is not acting as a representative. 15
- (2) A person who is requested to supply information under subsection (1) must comply with the request.
- (3) Information supplied to a Health and Wellbeing Board under this section may be used by the Board only for the purpose of enabling or assisting it to perform its functions. 20
- (4) Information requested under subsection (1) must be information that relates to –
 - (a) a function of the person to whom the request is made, or
 - (b) a person in respect of whom a function is exercisable by that person. 25

Care Trusts

184 Care Trusts

- (1) In section 77 of the National Health Service Act 2006 (Care Trusts), in subsection (1) –
 - (a) in paragraph (a), after “an NHS trust” insert “or a commissioning consortium or an NHS foundation trust”, 30
 - (b) omit the “and” preceding paragraph (b),
 - (c) in paragraph (b), for “the Secretary of State considers” substitute “the body and the local authority concerned consider”,
 - (d) in that paragraph, for “a local authority” substitute “the local authority”, 35
 - (e) after paragraph (b), insert “, and
 - (c) the requirements in subsection (1A) are satisfied,” and
 - (f) for “the Secretary of State may” substitute “the body and the local authority may jointly”. 40
- (2) After that subsection insert –

“(1A) The body and the local authority must, before designating the body as a Care Trust under this section –

- (a) publish in the prescribed form and manner –
 - (i) the reasons why they consider that the proposed designation would be likely to have the result mentioned in subsection (1)(b), and
 - (ii) information about the proposed governance arrangements of the Care Trust, and
 - (b) consult on the proposed designation in accordance with regulations.
- (1B) Where a body has been designated as a Care Trust under this section, the body and the local authority must notify prescribed persons of the designation.”
- (3) Omit subsections (2) and (3) of that section.
- (4) In subsection (4) of that section –
 - (a) for “The direction is that while the body is designated it” substitute “A body designated as a Care Trust under this section”,
 - (b) for “specified in the direction” substitute “agreed”,
 - (c) for “so specified” substitute “so agreed”, and
 - (d) at the end insert “; and “agreed” means agreed by the body and the local authority”.
- (5) For subsection (5) of that section substitute –
 - “(5) Where a body is designated as a Care Trust under this section, the body and the local authority may jointly revoke that designation.
 - (5A) Before revoking a designation as a Care Trust under this section, the body and the local authority must consult on the proposed revocation of the designation in accordance with regulations.
 - (5B) Where the designation of a body as a Care Trust under this section has been revoked, the body and the local authority must notify prescribed persons of the revocation.”
- (6) After subsection (5B) of that section insert –
 - “(5C) Regulations under subsection (1A)(b) or (5A) may include provision requiring a body and a local authority to publish prescribed information following a consultation.”
- (7) After subsection (5C) of that section insert –
 - “(5D) Where a duty is imposed by or by virtue of this section on a body and a local authority, they may make arrangements for the function to be discharged –
 - (a) by both of them acting jointly,
 - (b) by each of them acting separately, or
 - (c) by one of them acting on behalf of both of them.”
- (8) Omit subsection (6) of that section.
- (9) Omit subsection (7) of that section.
- (10) In subsection (9) of that section –
 - (a) omit paragraph (a),
 - (b) omit paragraph (b),

- (c) omit paragraph (c), and
 (d) in paragraph (d), for “subsection (3)” substitute “subsection (4)”.
- (11) In subsection (10) of that section, after “NHS trust” insert “or commissioning consortium or NHS foundation trust”.
- (12) In subsection (12) of that section, in the definition of “NHS functions” after “NHS trust” insert “or commissioning consortium or NHS foundation trust”. 5
- (13) Subsections (1)(e) and (2) do not apply in relation to a Primary Care Trust or an NHS trust which has satisfied any requirement in relation to consultation imposed by virtue of subsection (9) of section 77 of the National Health Service Act 2006 before the commencement of those subsections. 10
- (14) A Primary Care Trust or NHS trust which, after the commencement of subsection (5), has its designation as a Care Trust revoked must notify the Secretary of State of that revocation.
- (15) Despite the repeal of subsection (6) of section 77 of the National Health Service Act 2006 by subsection (8), that subsection continues to have effect so far as it applies to the revocation of designations – 15
- (a) in relation to Primary Care Trusts, until the commencement of section 29, and
- (b) in relation to NHS trusts, until the commencement of section 164.

CHAPTER 3 20

THE HEALTH SERVICE COMMISSIONER FOR ENGLAND

185 Disclosure of reports etc. by the Health Service Commissioner

In section 14 of the Health Service Commissioners Act 1993 (reports etc. by the Commissioner), after subsection (2H) insert –

- “(2I) Where the Commissioner is required by this section to send a report or statement of reasons to certain persons, the Commissioner may send the report or statement to such other persons as the Commissioner thinks appropriate.” 25

PART 6

PRIMARY CARE SERVICES 30

186 General medical services: minor amendments

- (1) In section 86 of the National Health Service Act 2006 (persons eligible to enter into general medical services contracts), in subsection (3), in paragraphs (a) and (b), before “legally and beneficially” insert “both”.
- (2) In section 89 of that Act (general medical services contracts: required terms), in subsection (3), for “may make” substitute “must make”. 35
- (3) In section 93 of that Act (persons with whom arrangements may be made under section 92 of that Act for the provision of primary medical services), in the definition of “qualifying body” in subsection (3), before “legally and beneficially” insert “both”. 40

187 Persons eligible to enter into general dental services contracts

- (1) Section 102 of the National Health Service Act 2006 (persons eligible to enter into general dental services contracts) is amended as follows.
- (2) In subsection (1), in paragraph (c), for “individuals” substitute “persons”.
- (3) After that subsection insert “,
(d) a limited liability partnership where the conditions in subsection (2A) are satisfied.” 5
- (4) In subsection (2), for paragraph (b) substitute –
“(b) subsection (3A) or (3B) applies.”
- (5) After that subsection insert – 10
“(2A) The conditions referred to in subsection (1)(d) are that –
(a) at least one member is a dental practitioner, and
(b) subsection (3A) or (3B) applies.”
- (6) After subsection (3) insert –
“(3A) This subsection applies if a partner or member who is a dental practitioner, or who falls within subsection (3C), has the power to secure that the partnership’s affairs are conducted in accordance with that partner’s or member’s wishes. 15
(3B) This subsection applies if, in any combination of partners or members who, acting together, have the power (or who, if they were to act together, would have the power) to secure that the partnership’s affairs are conducted in accordance with their wishes, at least one of them is a dental practitioner or a person who falls within subsection (3C).” 20
- (7) After subsection (3A) insert –
“(3C) A person falls within this subsection if the person is – 25
(a) an NHS employee,
(b) a section 92 employee, section 107 employee, section 50 employee, section 64 employee, section 17C employee or Article 15B employee,
(c) a health care professional who is engaged in the provision of services under this Act or the National Health Service (Wales) Act 2006, or 30
(d) an individual falling within section 108(1)(d).”

188 Arrangements under section 107 of the National Health Service Act 2006

- (1) Section 108 of the National Health Service Act 2006 (persons with whom section 107 arrangements may be made) is amended as follows. 35
- (2) In subsection (1) –
 - (a) before “make an agreement” insert “, subject to such conditions as may be prescribed,”,
 - (b) in each of paragraphs (b) and (c), omit “who meets the prescribed conditions”, 40
 - (c) for paragraph (f) substitute –
“(f) a dental corporation,”, and

- (d) after paragraph (f) insert –
- “(fa) a company limited by shares where the conditions in subsection (1A) are satisfied,
 - (fb) a limited liability partnership where subsection (1B) or (1C) is satisfied.”. 5
- (3) After subsection (1) insert –
- “(1A) The conditions referred to in subsection (1)(fa) are that –
- (a) every person who owns a share in the company owns it both legally and beneficially, and
 - (b) it is not possible for two or more members of the company who are not persons who fall within subsection (1)(a) to (e) to hold the majority of the voting rights conferred by shares in the company on any matter on which members have such rights.” 10
- (4) After subsection (1A) insert –
- “(1B) This subsection applies if a member of the partnership who falls within subsection (1)(a) to (e) has the power to secure that the partnership’s affairs are conducted in accordance with that member’s wishes. 15
- (1C) This subsection applies if, in any combination of members of the partnership who, acting together, have the power (or who, if they were to act together, would have the power) to secure that the partnership’s affairs are conducted in accordance with their wishes, at least one of them falls within subsection (1)(a) to (e).” 20
- (5) Omit subsection (2).
- (6) In subsection (3) –
- (a) at the appropriate place insert – 25
 - ““dental corporation” means a body corporate which is carrying on the business of dentistry in accordance with the Dentists Act 1984,” and
 - (b) omit the definition of “qualifying body”.
- 189 Payments in respect of costs of sight tests 30**
- (1) Section 180 of the National Health Service Act 2006 (payments in respect of costs of optical appliances) is amended as follows.
- (2) In subsection (3), before paragraph (a) insert –
- “(za) provide for payments to be made by the Board to meet, or to contribute towards, any cost accepted by the Board as having been incurred for the cost of a sight test of a person who – 35
 - (i) falls within section 115(2)(c), but
 - (ii) at the time of the test has not been issued with a notice by the Secretary of State of entitlement to receive assistance in respect of the cost of a sight test (or has been issued with such a notice but has yet to receive it),”.
- (3) After that subsection insert –
- “(3A) The amount of a payment by virtue of subsection (3)(za) or (a) must not exceed the amount for the time being set in regulations under this 40

section as the applicable fee in the case in question for the provision of the sight-testing service under section 115(1)(a).”

190 Pharmaceutical needs assessments

- (1) In section 128A of the National Health Service Act 2006 (pharmaceutical needs assessments), in subsections (1), (2)(c) and (d) and (3)(b) and (d), for “Primary Care Trust” substitute “Health and Wellbeing Board”. 5
- (2) In section 24 of that Act (plans for improving health etc.), at the end of subsection (8)(a) (but before the following “, and”) insert “(other than pharmaceutical services or local pharmaceutical services)”. 10
- (3) In section 24A of that Act (report on consultation), in subsection (2), for “Parts 4 to 7” substitute “Parts 4 to 6”. 10
- (4) In section 242 of that Act (public involvement and consultation), in subsection (1F), after “(1E),” insert “–
 - (a) “health services” does not include pharmaceutical services or local pharmaceutical services, and 15
 - (b) ”.
- (5) In section 242A of that Act (Strategic Health Authorities: further duty to involve users), at the end of subsection (2) add “; and for that purpose “health services” does not include pharmaceutical services or local pharmaceutical services”. 20

191 Control of entry on pharmaceutical lists

- (1) Section 129 of the National Health Service Act 2006 (regulations as to pharmaceutical lists) is amended as follows.
- (2) In subsection (2), in paragraph (c) –
 - (a) for “must be granted if” substitute “may be granted only if”, and 25
 - (b) omit the words from “and may otherwise” to the end.
- (3) After that subsection insert –

“(2ZA) The Board may not include the Secretary of State, or such other persons as the regulations may prescribe, in a list prepared for the purposes of provision under subsection (2)(a).” 30
- (4) In subsection (2A) –
 - (a) for “its needs statement” substitute “the needs statement for the relevant area”, and
 - (b) for the words from “it is necessary” to the end substitute “to grant the application would –
 - (a) meet a need in that area for the services or some of the services specified in the application, or
 - (b) secure improvements, or better access, to pharmaceutical services in that area.” 35
- (5) For subsection (2B) substitute – 40

“(2B) In subsection (2A), “relevant area”, in relation to a needs statement, is the area of the Health and Wellbeing Board which includes the

premises from which the application states that the applicant will undertake to provide services.”

- (6) In subsection (2C), for “(2B)” substitute “(2A)”.
- (7) In subsection (4)(c), omit “or (2B)”.
- (8) In subsection (6)(g) – 5
 (a) after “grounds on which” insert “or circumstances in which”,
 (b) before “may, or must,” insert “–
 (i) ”, and
 (c) at the end insert “,
 (ii) may, or must, remove a person or an entry in 10
 respect of premises from a pharmaceutical list”.
- (9) In subsection (10B), for “Primary Care Trust” substitute “Health and Wellbeing Board”.
- (10) In section 130 of that Act (regulations about appeals from decisions on applications for inclusion in pharmaceutical list) – 15
 (a) after “an application” insert “on grounds corresponding to the conditions referred to in section 151(2), (3) or (4) as read with section 153”, and
 (b) omit “(by way of redetermination)”.
- (11) In section 136 of that Act (designation of priority neighbourhoods or premises) – 20
 (a) in subsections (1)(a) and (2)(a) and (b), for “neighbourhoods” substitute “relevant areas”, and
 (b) after subsection (3) insert –
 “(4) “Relevant area” has the same meaning as in section 129(2)(a).” 25
- (12) In Schedule 12 to that Act (provision of local pharmaceutical services under LPS schemes), in paragraph 2 –
 (a) in sub-paragraphs (1)(a) and (2)(a) and (b), for “neighbourhoods” substitute “relevant areas”, and
 (b) after sub-paragraph (3) insert – 30
 “(4) “Relevant area” has the same meaning as in section 129(2)(a).”

192 Lists of performers of pharmaceutical services and assistants etc.

- (1) Omit the following provisions of the National Health Service Act 2006 – 35
 (a) section 146 (lists of persons performing local pharmaceutical services) and the preceding cross-heading,
 (b) section 149 (supplementary lists), and
 (c) section 150 (further provision about supplementary lists).

- (2) After section 147 of that Act insert –

“CHAPTER 4A

LISTS OF PERFORMERS OF PHARMACEUTICAL SERVICES AND ASSISTANTS

“147A Performers of pharmaceutical services and assistants

- (1) Regulations may make provision for the preparation, maintenance and publication by the Board of one or more lists of – 5
- (a) persons approved by the Board for the purpose of assisting in the provision of pharmaceutical services which the Board arranges;
 - (b) persons approved by the Board for the purpose of performing local pharmaceutical services. 10
- (2) The regulations may, in particular, provide that –
- (a) a person of a prescribed description may not assist in the provision of pharmaceutical services which the Board arranges unless the person is included in a list prepared by virtue of subsection (1)(a), 15
 - (b) a person of a prescribed description may not perform local pharmaceutical services unless the person is included in a list prepared by virtue of subsection (1)(b).
- (3) The regulations may, in particular, also include provision as to – 20
- (a) the preparation, maintenance and publication of a list,
 - (b) eligibility for inclusion in a list,
 - (c) applications for inclusion (including provision for the procedure for applications and the documents to be supplied on application, whether by the applicant or by arrangement with the applicant), 25
 - (d) the grounds on which an application for inclusion may or must be granted or refused or on which a decision on such an application may be deferred,
 - (e) requirements with which a person included in a list must comply (including the declaration of financial interests and gifts and other benefits), 30
 - (f) the grounds on which the Board may or must suspend or remove a person from a list, the procedure for doing so, and the consequences of doing so, 35
 - (g) circumstances in which a person included in a list may not withdraw from it,
 - (h) payments to or in respect of a person suspended from a list (including provision for the amount of the payment, or the method of calculating it, to be determined by the Secretary of State or a person appointed by the Secretary of State), 40
 - (i) the supply to the Board by an applicant for inclusion in a list, or by a person included in a list, of a criminal conviction certificate under section 112 of the Police Act 1997, a criminal record certificate under section 113 of that Act or an enhanced criminal record certificate under section 115 of that Act, 45
 - (j) the criteria to be applied in making decisions under the regulations,

- (k) appeals against decisions made by the Board under the regulations, and
- (l) disclosure of information about applicants for inclusion, grants or refusals of applications or suspensions or removals,
- and may make any provision corresponding to anything in sections 151 to 159. 5
- (4) Regulations under this section may, in particular, also provide that approval for the purposes of either paragraph (a) or paragraph (b) of subsection (1) is to be treated for the purposes of this section as approval for the purposes of the other paragraph (and for lists prepared by virtue of that subsection to be read accordingly). 10
- (5) Regulations under this section may, in particular, also provide for –
- (a) a person’s inclusion in a list to be subject to conditions determined by the Board,
- (b) the Board to vary the conditions or impose different ones, 15
- (c) the consequences of failing to comply with a condition (including suspension or removal from a list),
- (d) the review by the Board of decisions made by it by virtue of the regulations.
- (6) The imposition of such conditions must be with a view to – 20
- (a) preventing any prejudice to the efficiency of the services to which a list relates, or
- (b) preventing any acts or omissions of the type described in section 151(3)(a).
- (7) If the regulations provide under subsection (3)(f) or (5) that the Board may suspend or remove a person (P) from a list, they must include provision – 25
- (a) requiring P to be given notice of any allegation against P,
- (b) giving P the opportunity of putting P’s case at a hearing before the Board makes any decision as to P’s suspension or removal, 30
- and
- (c) requiring P to be given notice of the decision of the Board, the reasons for it and any right of appeal under subsection (8) or (9).
- (8) If the regulations provide under subsection (3)(c) or (f) that the Board may refuse a person’s application for inclusion in a list, or remove a person from one, the regulations must provide for an appeal to the First-tier Tribunal against the decision of the Board. 35
- (9) If the regulations make provision under subsection (5), they must provide for an appeal by the person in question to the First-tier tribunal against the decision of the Board – 40
- (a) to impose conditions, or any particular condition,
- (b) to vary a condition,
- (c) to remove the person from the list for breach of condition,
- (d) on any review of an earlier such decision of the Board.
- (10) Regulations making provision as to the matters referred to in subsection (3)(l) may in particular authorise the disclosure of information – 45
- (a) by the Board to the Secretary of State, and

(b) by the Secretary of State to the Board.

147B Further provision about regulations under section 147A

- (1) Regulations by virtue of section 147A may require a person (A) included in—
- (a) a pharmaceutical list, or 5
 - (b) a list under section 132(3) (provision of drugs, medicines or listed appliances),
- not to employ or engage a person (B) to assist A in the provision of the service to which the list relates unless B is included in a list mentioned in subsection (2). 10
- (2) The lists are—
- (a) a list referred to in subsection (1),
 - (b) a list under section 147A,
 - (c) a list under section 91, 106 or 123,
 - (d) a list corresponding to a list under section 91 prepared by the Board by virtue of regulations made under section 145, 15
 - (e) a list corresponding to a list mentioned in any of paragraphs (a) to (d) prepared by a Local Health Board under or by virtue of the National Health Service (Wales) Act 2006,
- or, in any of the cases in paragraphs (a) to (e), such a list of a prescribed description. 20
- (3) If regulations do so require, they may in particular require that both A and B be included in lists prepared by the Board.”
- (3) For the heading of Chapter 5 of Part 7 of that Act substitute “Conditional inclusion in pharmaceutical lists”. 25
- (4) In section 159 of that Act (national disqualification), in subsection (1)—
- (a) omit paragraph (b), and
 - (b) in paragraph (d), for “section 146” substitute “section 147A”.
- (5) Regulations under section 146 or 149 of that Act having effect immediately before the commencement of subsection (1) of this section are, despite the repeals made by that subsection, to continue to have effect as if they had been made under section 147A of that Act (as inserted by subsection (2) of this section). 30

PART 7

REGULATION OF HEALTH AND SOCIAL CARE WORKERS 35

Orders under section 60 of the Health Act 1999

193 Power to regulate social workers etc. in England

- (1) Section 60 of the Health Act 1999 (regulation of health care professions etc.) is amended as follows.
- (2) In subsection (1), after paragraph (b) insert— 40
- “(ba) regulating the social work profession in England,

- (bb) modifying the regulation of the social work profession in England, so far as appears to Her to be necessary or expedient for the purpose of securing or improving the regulation of the profession or the services which it provides or to which it contributes,”. 5
- (3) In that subsection, after paragraph (bb) insert—
- “(bc) regulating social care workers in England who appear to Her to require regulation in pursuance of this section,
- (bd) modifying the regulation of social care workers in England, so far as appears to Her to be necessary or expedient for the purpose of securing or improving their regulation or the services which they provide or to which they contribute,”. 10
- (4) In subsection (2), at the end of each of paragraphs (c) and (d), insert “(other than the social work profession in England)”.
- (5) After that subsection insert— 15
- “(2ZA) In subsections (1) and (2), “the social work profession in England” means the profession engaged in social work in England; and for the purposes of this section, “social work in England” means social work which is required in connection with any health, education or social services provided in England.” 20
- (6) After subsection (2ZA) insert—
- “(2ZB) In subsection (1)(bc) and (bd), “social care workers in England” means persons who are engaged in social care work in England.
- (2ZC) For that purpose, “social care work in England” means work (other than social work in England) that is of any of the following descriptions— 25
- (a) employment at a children’s home, care home or residential family centre in England,
- (b) management of a home or centre of a kind mentioned in paragraph (a), 30
- (c) employment for the purposes of a domiciliary care agency, fostering agency, voluntary adoption agency or adoption support agency, in so far as the agency provides services to persons in England,
- (d) management of an agency of a kind mentioned in paragraph (c), 35
- (e) work for the purposes of the social services functions of a local authority whose area is in England,
- (f) the provision in England of services similar to services which may or must be provided by a local authority in the exercise of their social services functions, 40
- (g) the provision of personal care for persons in England,
- (h) employment (in an undertaking other than an establishment or agency) which consists of or includes supplying, or providing services for the purpose of supplying, persons to provide personal care for persons in England, 45
- (i) management of an undertaking of the kind mentioned in paragraph (h),

- (j) employment in connection with the discharge of functions of the Secretary of State under section 80 of the Children Act 1989 (inspection of children’s homes),
 - (k) employment as a member of staff of the Office for Standards in Education, Children’s Services and Skills who inspects premises under – 5
 - (i) section 87 of the Children Act 1989 (welfare of children accommodated in independent schools and colleges),
 - (ii) section 31 of the Care Standards Act 2000 (inspections by persons authorised by registration authority), or 10
 - (iii) section 139 of the Education and Inspections Act 2006 (inspection by Chief Inspector),
 - (l) employment as a member of staff of the Care Quality Commission who, under Part 1 of the Health and Social Care Act 2008, inspects premises used for or in connection with the provision of social care (within the meaning of that Part), 15
 - (m) management of staff mentioned in paragraph (k) or (l),
 - (n) employment at a day centre in England,
 - (o) participation in a course approved by the Health and Care Professions Council under article 15 of the Health and Social Work Professions Order 2001 for persons wishing to engage in the social work profession in England.” 20
- (7) After subsection (2ZC) insert –
- “(2ZD) An expression used in subsection (2ZC) and in section 55 of the Care Standards Act 2000 has the same meaning in that subsection as it has in that section.” 25
- (8) After subsection (2ZD) insert –
- “(2ZE) The exercise of functions of an approved mental health professional by a member of a profession to which subsection (2) applies is not to be regarded as social work of the kind engaged in by the social work profession in England.” 30
- (9) After subsection (2ZE) insert –
- “(2ZF) In this section, “approved mental health professional” has the meaning given in section 114 of the Mental Health Act 1983.”
- (10) For the title to section 60 of the Health Act 1999 substitute “Regulation of health professions, social workers, other care workers etc.”. 35
- (11) In section 60A of that Act (standard of proof in fitness to practise proceedings), in subsection (2), for “a person’s fitness to practise a profession to which section 60(2) applies” substitute “a matter specified in subsection (2A)”. 35
- (12) After that subsection insert – 40
- “(2A) The matters are –
- (a) a person’s fitness to practise a profession to which section 60(2) applies;
 - (b) a person’s fitness to practise the social work profession in England (within the meaning given by section 60); 45
 - (c) a person’s suitability to remain registered as a social care worker in England (with the meaning given by that section).”

- (13) In subsection (3) of that section, at the end insert “or the social work profession in England (within the meaning given in section 60(2ZA))”.

194 Training etc. of approved mental health professionals in England

In section 60 of the Health Act 1999 (regulation of health care professions etc.), in subsection (1), after paragraph (e) insert –

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- “(ea) modifying the functions, powers or duties of the Health and Care Professions Council that relate to the education and training of persons who are or wish to become approved mental health professionals.”

195 Orders regulating social care workers in England: further provision

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- (1) Schedule 3 to the Health Act 1999 (further provision as to power to make Orders in Council under section 60 of that Act) is amended as follows.

- (2) After paragraph 1 (matters generally within the scope of the Orders) insert –

“1A An Order may make provision, in relation to any social care workers in England, for any of the following matters (among others) –

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- (a) the establishment and continuance of a regulatory body,
- (b) the functions of the Health and Care Professions Council or of another regulatory body,
- (c) keeping registers of social care workers in England of any description,
- (d) privileges of registered persons,
- (e) education and training,
- (f) standards of conduct and performance,
- (g) discipline,
- (h) removal or suspension from registration or the imposition of conditions on registration,
- (i) investigation and enforcement by or on behalf of the Health and Care Professions Council or another regulatory body,
- (j) appeals,
- (k) default powers exercisable by a person other than the Health and Care Professions Council or another regulatory body.”

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- (3) After paragraph 1A insert –

“1B The provision that may be made by virtue of paragraph 1(e) or 1A(f) includes provision for standards of conduct and performance of members of a profession, or social care workers in England, carrying out the functions of an approved mental health professional.”

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- (4) In paragraph 7 (prohibition on Orders abolishing regulatory bodies), in sub-paragraph (1), for paragraph (c) substitute –

“(c) the Health and Care Professions Council.”

- (5) In paragraph 8 (matters outside the scope of the Orders), after sub-paragraph (2) insert –

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“(2ZA) Where an enactment provides for any function mentioned in sub-paragraph (2ZB) to be exercised by the Health and Care Professions Council or another regulatory body, or any of its committees or

- officers, an Order may not provide for any person other than that body or any of its committees or officers to exercise that function.
- (2ZB) The functions are –
- (a) keeping the registers of social care workers in England of any description, 5
 - (b) determining standards of education and training required as a condition of registration,
 - (c) giving advice about standards of conduct and performance.”
- (6) In paragraph 9 (preliminary procedure for making Orders), in sub-paragraph (1)(b) – 10
- (a) after “represent any profession” insert “or any social care workers in England”, and
 - (b) after “by any profession” insert “or any social care workers in England”.
- (7) In paragraph 10 (interpretation) – 15
- (a) at the appropriate place insert the following –
““social care work in England”, “social care workers in England” and “the social work profession in England” have the meaning given by section 60,” and
 - (b) in the definition of “regulatory body” – 20
 - (i) after “any profession” insert “or any social care workers in England”, and
 - (ii) after “the profession” insert “or the social care workers in England concerned”.
- (8) In paragraph 11 (application), after sub-paragraph (2) insert – 25
- “(2A) References in section 60 and this Schedule to regulation, in relation to social care workers in England, include – 25
- (a) the regulation of persons seeking to be registered or who were, but are no longer, allowed to be registered as social care workers in England,
 - (b) the regulation of activities carried on by persons who are not social care workers in England (or members of the social work profession in England) but which are carried on in connection with social care work in England.” 30

The General Social Care Council

- 196 Abolition of the General Social Care Council** 35
- (1) The General Social Care Council (“the GSCC”) is abolished.
 - (2) In section 54 of the Care Standards Act 2000 (the Care Councils) – 40
 - (a) in subsection (1), omit paragraph (a) and the “and” following it,
 - (b) in that subsection, for “conferred on them” substitute “conferred on it”,
 - (c) omit subsection (2),
 - (d) in subsection (4), for “Each Council” substitute “The Welsh Council”,
 - (e) in subsection (6), for “a Council” substitute “the Welsh Council”, and
 - (f) omit subsection (7).
 - (3) For the title to that section substitute “The Care Council for Wales”.

*The Health and Care Professions Council***197 Regulation of social workers in England**

- (1) The Health Professions Order 2001 (S.I. 2002/254) is amended as follows.
- (2) In Schedule 3 (interpretation), in paragraph 1, in the definition of “relevant professions”, at the appropriate place insert “social workers in England;”. 5
- (3) In that paragraph, at the appropriate place insert –
“social worker in England” means a member of the social work profession in England, and references to “social work in England” are to be construed accordingly;”.
- (4) In article 1(1) (citation), for “the Health Professions Order 2001” substitute “the Health and Social Work Professions Order 2001”. 10
- (5) In Schedule 1, in paragraph 1A (membership), in sub-paragraph (1)(b), after paragraph (i) (but before the “and” following it) insert –
“(ia) are not and never have been registered as social workers in a register kept by the General Social Care Council, the Care Council for Wales, the Scottish Social Services Council or the Northern Ireland Social Care Council;”. 15
- (6) For the title to the Order substitute “Health and Social Work Professions Order 2001”. 20
- (7) In the following provisions, for “the Health Professions Order 2001” substitute “the Health and Social Work Professions Order 2001” –
 - (a) section 18(e) of the London County Council (General Powers) Act 1920;
 - (b) section 58(1A)(a) of the Medicines Act 1968;
 - (c) section 27(1A)(a) of the National Health Service (Scotland) Act 1978; 25
 - (d) section 3(11) of the Video Recordings Act 1984;
 - (e) paragraph (E) in the third column of the entry for the London County Council (General Powers) Act 1920 in Schedule 2 to the Greater London Council (General Powers) Act 1984;
 - (f) paragraph (c) of the definition of “establishment for special treatment” in section 4 of the London Local Authorities Act 1991; 30
 - (g) paragraph (c) of item 1 in Group 7 in Part 2 of Schedule 9 to the Value Added Tax Act 1994;
 - (h) section 69(1)(h) of the Data Protection Act 1998;
 - (i) section 60(2)(c) of the Health Act 1999; 35
 - (j) section 29(1)(j) of the National Health Service Reform and Health Care Professions Act 2002;
 - (k) section 126(4)(a) of the National Health Service Act 2006;
 - (l) section 80(4)(a) of the National Health Service (Wales) Act 2006;
 - (m) entry 10 in the table in section 41(7) of the Safeguarding Vulnerable Groups Act 2006. 40
- (8) In the definition of “registered psychologist” in each of the following provisions, for “the Health Professions Order 2001” substitute “the Health and Social Work Professions Order 2001” –
 - (a) section 307(1) of the Criminal Procedure (Scotland) Act 1995; 45

- (b) section 207(6) of the Criminal Justice Act 2003;
- (c) section 21(2)(b) of the Criminal Justice (Scotland) Act 2003;
- (d) section 25 of the Gender Recognition Act 2004.

198 The Health and Care Professions Council

- (1) The body corporate known as the Health Professions Council – 5
 - (a) is to continue to exist, and
 - (b) is to change its name to the Health and Care Professions Council.
- (2) In article 3 of the Health and Social Work Professions Order 2001 (S.I. 2002/254) (the Council and its Committees), for sub-paragraph (1) substitute –
 - “(1) The Health and Care Professions Council is referred to in this Order as “the Council”.” 10
- (3) For the title to that article substitute “The Health and Care Professions Council and its Committees”.
- (4) In Schedule 3 to that Order (interpretation), in the definition of “the Council” in paragraph 1, for “the Health Professions Council established under article 3” substitute “the Health and Care Professions Council (formerly known as the Health Professions Council and continued in existence by section 198 of the Health and Social Care Act 2011)” 15

199 Functions of the Council in relation to social work in England

- (1) The Health and Social Work Professions Order 2001 (S.I. 2002/254) is amended as follows. 20
- (2) In article 3 (the Council and its Committees), in paragraph (5)(b) –
 - (a) in paragraph (ii), omit “other”,
 - (b) omit the “and” following paragraph (iv), and
 - (c) after paragraph (v) insert “, 25
 - (vi) the regulation of social work in England, and
 - (vii) the provision, supervision or management of the services of persons engaged in social work in England.”
- (3) In that article, after paragraph (5A) insert – 30
 - “(5AA) The public bodies with which the Council must co-operate for the purposes of paragraph (5)(b) include in particular –
 - (a) the Care Council for Wales,
 - (b) the Scottish Social Services Council, and
 - (c) the Northern Ireland Social Care Council.” 35
- (4) In that article, after paragraph (17) insert –
 - “(17A) The Council may –
 - (a) make recommendations to the Secretary of State concerning social care workers in England who in its opinion should be regulated pursuant to section 60(1)(bc) of the Health Act 1999; and 40

- (b) give such guidance as it sees fit, to such persons as seem to it to have an interest in such regulation, on the criteria to be taken into account in determining whether social care workers in England should be so regulated.”
- (5) In article 6 (register), in paragraph (3)(aa), after “visiting health” insert “or social work”; and in consequence of that – 5
- (a) for the title to article 13A substitute “Visiting health or social work professionals from relevant European States”, and
- (b) in articles 7(4), 9(8) and 37(1)(aa), after “visiting health” insert “or social work”. 10
- (6) In article 10 (renewal of registration and readmission), in paragraph (6) after “visiting health” insert “or social work”.
- (7) In article 12 (approved qualifications), in paragraph (1), after sub-paragraph (c) insert –
- “(ca) where he is applying for admission to the register as a social worker, he has, in Wales, Scotland or Northern Ireland, undergone training in social work and – 15
- (i) the training is recognised by the Council as meeting the standard which it requires for admission to the part of the register relating to the social work profession in England, or 20
- (ii) the training is not so recognised but he has undergone, whether in England or elsewhere, such additional training or professional experience as satisfies the Council that he has the requisite standard of proficiency for admission to the part of the register relating to the social work profession in England.” 25
- (8) In that article, in paragraph (2) –
- (a) omit the “and” preceding paragraph (b), and
- (b) after that paragraph insert “; and 30
- (c) assess training or professional experience acquired in Wales, Scotland or Northern Ireland in social work and to compare it, together with qualifications mentioned in sub-paragraph (a) where appropriate, with the standard of proficiency required for admission to the part of the register relating to the social work profession in England.” 35
- (9) After article 13A insert –
- “13B Requirement for social workers in England to be registered**
- (1) A person may not practise as a social worker in England unless the person is registered in the part of the register relating to the social work profession in England. 40
- (2) Paragraph (1) does not apply to a person who –
- (a) is registered as a social worker in a register kept by the Care Council for Wales, the Scottish Social Services Council or the Northern Ireland Social Care Council, and 45
- (b) is practising in England as a social worker on a temporary basis.”

- (10) In article 19 (post-registration training), in paragraph (2A)(b), after “visiting health” insert “or social work”.
- (11) In article 20 (Wales), at the end insert “; but the reference to the Council’s function under article 15(4)(b) does not include a reference to that function so far as relating to social work in England”. 5
- (12) In article 39 (offences), after paragraph (1) insert –
“(1A) A person who is registered as a social worker in a register kept by the Care Council for Wales, the Scottish Social Services Council or the Northern Ireland Social Care Council is to be regarded for the purposes of paragraph (1)(b) as entitled to use the title of “social worker”.” 10
- (13) In Schedule 3 (interpretation), in paragraph 1, in the definition of “visiting health professional from a relevant European state”, after “health” in each place it appears insert “or social work”.

200 Appeals in cases involving social workers in England

- (1) The Health and Social Work Professions Order 2001 (S.I. 2002/254) is amended as follows. 15
- (2) In article 37 (appeals against decisions of the Education and Training Committee), in paragraph (5A), at the end of sub-paragraph (a) insert “or registered as a social worker in a register kept by the General Social Care Council, the Care Council for Wales, the Scottish Social Services Council or the Northern Ireland Social Care Council”. 20
- (3) In that article, in paragraph (8), after “paragraph (4)” insert “(other than a hearing on an appeal relating to a social worker in England)”.
- (4) In that article, after that paragraph insert –
“(8A) A hearing provided for by the rules made under paragraph (4) on an appeal relating to a social worker in England is to be held in England.” 25
- (5) In article 38 (appeals), after paragraph (1) insert –
“(1ZA) An appeal from a decision referred to in paragraph (1)(b) relating to social workers in England shall lie only to the county court.”
- (6) In that article, in paragraph (4), after “article” insert “(subject to paragraph (5))”. 30
- (7) In that article, after that paragraph insert –
“(5) In this article, in the case of an appeal relating to a social worker in England, “the appropriate court” means the High Court of Justice in England and Wales.” 35

201 Approval of courses for approved mental health professionals

- (1) Part 8 of the Mental Health Act 1983 (miscellaneous local authority functions etc.) is amended as follows.

- (2) Before section 114A insert –

“114ZA Approval of courses: England

- (1) The Health and Care Professions Council may approve courses for persons who are, or wish to become, approved to act as approved mental health professionals by a local social services authority whose area is in England. 5
- (2) The Council must publish a list of –
- (a) the courses which are approved under this section, and
 - (b) the courses which have been, but are no longer, approved under this section and the periods for which they were so approved. 10
- (3) The functions of an approved mental health professional are not to be considered to be relevant social work for the purposes of Part 4 of the Care Standards Act 2000.
- (4) Where the function under subsection (1) is, in accordance with the Health and Social Work Professions Order 2001, exercisable by a committee of the Council, the committee may arrange for another person to exercise the function on the Council’s behalf.” 15
- (3) In section 114 (approval of mental health professionals by local social services authority), in subsection (6), after “section” insert “114ZA or”.
- (4) Section 114A (approval of courses) is amended as follows. 20
- (5) For subsection (1) substitute –
- “(1) The Care Council for Wales may, in accordance with rules made by it, approve courses for persons who are, or wish to become, approved to act as approved mental health professionals by a local social services authority whose area is in Wales.” 25
- (6) Omit subsection (3).
- (7) In subsection (5), omit “General Social Care Council and the”.
- (8) For the title to that section substitute “Approval of courses: Wales”.

202 Exercise of function of approving courses, etc.

- (1) The Health and Social Work Professions Order 2001 (S.I. 2002/254) is amended as follows. 30
- (2) In article 3 (the Council and its Committees), in paragraph (3), at the end insert “(and see also section 114ZA of the Mental Health Act 1983 (approval of courses for approved mental health professionals))”.
- (3) After paragraph (5) of that article insert – 35
- “(5ZA) In the application of paragraph (5) to the functions of the Council that relate to persons who are, or wish to become, approved mental health professionals in England, references to registrants are to be read as including a reference to such approved mental health professionals in England as are not registrants.” 40
- (4) In article 14 (the Council’s education and training committee), after sub-

- paragraph (b) insert –
 “(ba) the setting of criteria under article 15B;”
- (5) After article 15 insert –
- “15A Exercise of function for approving courses for approved mental health professionals”** 5
- (1) The function under section 114ZA(1) of the Mental Health Act 1983 (approval of courses for approved mental health professionals in England) is exercisable by the Education and Training Committee.
- (2) In relation to AMHP courses run outside the United Kingdom, section 114ZA(1) of that Act applies only in relation to courses run by institutions which are approved in accordance with article 15B(3). 10
- (3) In this article and articles 15B to 18, “AMHP course” means a course of the kind referred to in section 114ZA(1) of the Mental Health Act 1983.”
- 15B Criteria for approving courses for approved mental health professionals** 15
- (1) The Council must set the criteria to be applied in exercising the function under section 114ZA(1) of the Mental Health Act 1983.
- (2) The Education and Training Committee must –
- (a) ensure that universities and other bodies in the United Kingdom concerned with the provision of AMHP courses are notified of the criteria set under paragraph (1); and 20
- (b) take appropriate steps to satisfy itself that the AMHP courses provided by such bodies meet those criteria.
- (3) In performing the function under paragraph (2)(b), the Committee may, in particular, approve or arrange with others to approve institutions which the Committee considers to be properly organised and equipped for conducting AMHP courses. 25
- (4) The Council must from time to time publish a statement of the criteria set under paragraph (1).
- (5) An AMHP course is to be treated for the purposes of articles 16 to 18 as a relevant course of education or training.” 30
- (6) In article 16 (visitors), in paragraph (6), at the end insert “; but that does not apply to AMHP courses.”
- (7) In article 17 (information), after paragraph (3) insert –
- “(3A) The reference in paragraph (3) to the functions of the Committee under this Order includes a reference to the function under section 114ZA(1) of the Mental Health Act 1983 (approval of courses for approved mental health professionals) in so far as that function is exercisable by the Committee.” 35
- (8) In article 18 (refusal or withdrawal of approval), after paragraph (1) insert – 40
- “(1A) Where as a result of any visitor’s report or other information acquired by the Committee or the Council, and taking account of the observations received from the institution under article 16(9), the Committee is of the opinion that an AMHP course does not meet the

criteria set under article 15B(1), it may refuse to approve, or withdraw approval from, the course.”

- (9) In that article –
- (a) in paragraph (3), after “paragraph (1)” insert “or (1A)”, and
 - (b) in paragraph (6), after “paragraph (1)” in each place it appears insert “or, as the case may be, (1A)”. 5
- (10) In article 21(1)(a) (Council’s duty to establish standards of conduct etc. and give guidance), after “prospective registrants” insert “(including registrants or prospective registrants carrying out the functions of an approved mental health professional)”. 10
- (11) *In article 45 (finances of the Council), after paragraph (3) insert –*
- “(3A) *The Secretary of State may make grants or loans to the Council towards expenses incurred, or to be incurred by it, in connection with the exercise of its functions in relation to persons who are, or wish to become, approved mental health professionals in England.*” 15

203 Arrangements with other health or social care regulators

- (1) After article 44 of the Health and Social Work Professions Order 2001 (S.I. 2002/254) insert –
- “44A Arrangements with other persons who maintain registers of health or social care workers** 20
- (1) The Council may make arrangements with any relevant person for the Council to provide administrative, technical or advisory services to that person.
 - (2) A relevant person is a person or group of persons (whether inside or outside the United Kingdom) who maintain – 25
 - (a) a register of members of a profession engaged in the provision of health care,
 - (b) a register of persons engaged in, but who are not members of a profession engaged in, the provision of health care,
 - (c) a register of members of the social work profession, or 30
 - (d) a register of persons engaged in social care work.”
- (2) In Schedule 3 to that Order (interpretation), at the appropriate place, insert –
- ““health care” includes –
- (a) all forms of health care for individuals, whether relating to physical or mental health, and 35
 - (b) procedures that are similar to forms of medical or surgical care but are not provided in connection with a medical condition;”.

204 References in enactments to registered health professionals, etc.

- (1) In section 58 of the Medicines Act 1968 (medicinal products on prescription only), after subsection (1A) insert – 40
- “(1ZA) Paragraphs (a) and (g) of subsection (1A) do not apply to persons in so far as they are registered as members of the social work profession in

- England or social care workers in England (each of those expressions having the same meaning as in section 60 of the Health Act 1999).”
- (2) In section 27 of the National Health Service (Scotland) Act 1978 (arrangements for provision of pharmaceutical services), after subsection (1B) insert –
- “(1C) Paragraphs (a) and (h) of subsection (1A) do not apply to persons in so far as they are registered as members of the social work profession in England or social care workers in England (each of those expressions having the same meaning as in section 60 of the Health Act 1999).”
- (3) In section 3 of the Video Recordings Act 1984 (exempted supplies), after subsection (11) insert –
- “(11A) But subsection (11) does not apply to a person in so far as the person is required to register under the Health and Social Work Professions Order 2001 as a member of the social work profession in England (within the meaning of section 60 of the Health Act 1999).”
- (4) In Group 7 in Part 2 of Schedule 9 to the Value Added Tax Act 1994 (exemption for medical care services), in the Notes, after Note (2) insert –
- “(2ZA) Paragraph (c) of item 1 does not include supplies of services made by a person in the capacity of a registered member of the social work profession in England (within the meaning of section 60 of the Health Act 1999).”
- (5) In section 69 of the Data Protection Act 1998 (meaning of “health professional”), at the end of paragraph (h) of subsection (1), insert “, except in so far as the person is registered as a social worker in England (within the meaning of that Order)”.
- (6) In section 25 of the National Health Service Reform and Health Care Professions Act 2002 (the Council for Healthcare Regulatory Excellence), after subsection (3) insert –
- “(3A) A reference in an enactment to a body mentioned in subsection (3) is not (unless there is express provision to the contrary) to be read as including a reference to the Health and Care Professions Council, or a regulatory body within subsection (3)(j), so far as it has functions relating to –
- (a) the social work profession in England, or
- (b) social care workers in England.
- (3B) For the purposes of subsection (3A) –
- “enactment” means an enactment contained in –
- (a) an Act, an Act of the Scottish Parliament or an Act or Measure of the National Assembly for Wales (whether made before or after the commencement of this subsection), or
- (b) subordinate legislation (within the meaning of the Interpretation Act 1978), an instrument made under an Act of the Scottish Parliament, an Act or Measure of the National Assembly for Wales or Northern Ireland legislation (whether made before or after that commencement), and

“the social work profession in England” and “social care workers in England” have the meaning given in section 60 of the 1999 Act.”

- (7) In section 126 of the National Health Service Act 2006 (arrangements for provision of pharmaceutical services), after subsection (4) insert— 5
- “(4A) Paragraphs (a) and (h) of subsection (4) do not apply to persons in so far as they are registered as members of the social work profession in England or social care workers in England (each of those expressions having the same meaning as in section 60 of the Health Act 1999).”
- (8) In section 80 of the National Health Service (Wales) Act 2006 (arrangements for provision of pharmaceutical services), after subsection (4) insert— 10
- “(4A) Paragraphs (a) and (h) of subsection (4) do not apply to persons in so far as they are registered as members of the social work profession in England or social care workers in England (each of those expressions having the same meaning as in section 60 of the Health Act 1999).” 15

Role of the Secretary of State

205 Functions of the Secretary of State in relation to social care workers

- (1) In section 67 of the Care Standards Act 2000 (functions of the appropriate Minister), after subsection (1) insert—
- “(1A) But the Secretary of State may not exercise the function under subsection (1)(a) or (d) in relation to a social worker who is registered as such in a register maintained under article 5 of the Health and Social Work Professions Order 2001.” 20
- (2) In subsection (2) of that section, after “take part in” insert “courses approved by the Health and Care Professions Council under article 15 or by virtue of article 19(4) of the Health and Social Work Professions Order 2001 for persons who are or wish to become social workers,”. 25
- (3) The Secretary of State may make arrangements with the Health and Care Professions Council for the discharge, during the relevant period, of the functions of the General Social Care Council; and for that purpose “the relevant period” is the period— 30
- (a) beginning with the day on which this Act is passed, and
- (b) ending with the commencement of section 196(1).

The Professional Standards Authority for Health and Social Care

206 The Professional Standards Authority for Health and Social Care 35

- (1) The body corporate known as the Council for Healthcare Regulatory Excellence—
- (a) is to continue to exist, and
- (b) is to change its name to the Professional Standards Authority for Health and Social Care. 40

- (2) In consequence of that, in section 25 of the National Health Service Reform and Health Care Professions Act 2002 (which establishes the Council for Healthcare Regulatory Excellence), in subsection (1) –
 - (a) for “the Council for Healthcare Regulatory Excellence” substitute “the Professional Standards Authority for Health and Social Care”, and 5
 - (b) for “the Council” substitute “the Authority”.
- (3) For the title of section 25 of that Act substitute “The Professional Standards Authority for Health and Social Care”.
- (4) For the cross-heading preceding that section substitute “The Professional Standards Authority for Health and Social Care”. 10
- (5) For the title of Part 2 of that Act substitute “Health and Social Care Professions etc.”.

207 Functions of the Authority

- (1) In section 25 of the National Health Service Reform and Health Care Professions Act 2002 (the Professional Standards Authority), in subsection (2)(a), for “patients” substitute “users of health care, users of social care in England, users of social work services in England”. 15
- (2) In subsection (2A) of that section, for “patients” substitute “users of health care, users of social care in England, users of social work services in England”.
- (3) In section 26A of that Act (powers of Secretary of State etc. to request the Authority for advice), after subsection (1) insert – 20
 - “(1A) The Secretary of State may request the Authority for advice on any matter connected with the social work profession, or social care workers, in England; and the Authority must comply with such a request.” 25
- (4) After subsection (2) of that section insert –
 - “(2A) A person to whom the Authority gives advice, or for whom it investigates and reports on a matter, under this section must pay such fee as the Authority determines; and the fee may be charged by reference to the advice or the investigation and report concerned or on a periodic basis.” 30
- (5) In section 26B of that Act (duty to inform and consult the public), in subsection (4)(b), for “patients” substitute “users of health care, users of social care in England or users of social work services in England”.
- (6) In section 29 of that Act (reference of disciplinary cases to court by the Authority), in subsection (5), after “subsection (4)” insert “(subject to subsection (5A))”. 35
- (7) After subsection (5) of that section insert –
 - “(5A) In the case of a social worker in England, the “relevant court” means the High Court of Justice in England and Wales.” 40
- (8) In paragraph 16 of Schedule 7 to that Act (reports and other information), in sub-paragraph (1A)(a) for “patients” substitute “users of health care, users of social care in England, users of social work services in England”.

208 Funding of the Authority

- (1) After section 25 of the National Health Service Reform and Health Care Professions Act 2002 insert—

“25A Funding of the Authority

- | | | |
|-----|---|----|
| (1) | The Privy Council must by regulations require each regulatory body to pay the Authority periodic fees of such amount as the Privy Council determines in respect of such of the Authority’s functions in relation to that body as are specified in the regulations. | 5 |
| (2) | A reference in this section to the Authority’s functions does not include a reference to its functions under sections 25G to 25I and 26A. | 10 |
| (3) | The regulations must, in particular, provide for the method of determining the amount of a fee under the regulations. | |
| (4) | Before determining the amount of a fee under the regulations, the Privy Council must request the Authority to make a proposal as to the amount of funding that it considers it requires in order to perform for the period to which the fee would apply such of its functions in relation to the regulatory bodies as are specified in the regulations. | 15 |
| (5) | The Authority must— | |
| | (a) comply with a request under subsection (4), but | |
| | (b) before doing so, consult the regulatory bodies. | 20 |
| (6) | Having received a proposal under subsection (5), the Privy Council may consult the regulatory bodies. | |
| (7) | Having taken into account such representations as it receives from consultees, the Privy Council must— | |
| | (a) make a proposal as to the amount of funding that it considers the Authority requires in order to perform for the period to which the fee would apply such of its functions in relation to the regulatory bodies as are specified in the regulations, and | 25 |
| | (b) determine in accordance with the method provided for under subsection (3) the amount of the fee that each regulatory body would be required to pay. | 30 |
| (8) | The Privy Council must— | |
| | (a) consult the Authority about the proposal under subsection (7)(a) and the determinations under subsection (7)(b), and | |
| | (b) consult each regulatory body about the determination under subsection (7)(b) of the amount it would be required to pay. | 35 |
| (9) | Having taken into account such representations as it receives from consultees, the Privy Council must— | |
| | (a) determine the amount of funding that the Authority requires in order to perform for the period to which the fee would apply such of its functions in relation to the regulatory bodies as are specified in the regulations, and | 40 |
| | (b) determine in accordance with the method provided for under subsection (3) the amount of the fee that each regulatory body is to be required to pay. | 45 |

- (10) Regulations under this section requiring payment of a fee may make provision –
- (a) requiring the fee to be paid within such period as is specified;
 - (b) requiring interest at such rate as is specified to be paid if the fee is not paid within the period specified under paragraph (a); 5
 - (c) for the recovery of unpaid fees or interest.
- (11) The regulations may enable the Privy Council to redetermine the amount of a fee provided for under the regulations, on a request by the Authority or a regulatory body or on its own initiative.
- (12) Before making regulations under this section, the Privy Council must consult – 10
- (a) the Authority,
 - (b) the regulatory bodies, and
 - (c) such other persons as it considers appropriate.”
- (2) In section 25(5) of that Act (meaning of “this group of sections”) for “26” substitute “25A”. 15
- (3) In section 38 of that Act (regulations and orders) after subsection (3) insert –
- “(3A) A statutory instrument containing regulations made by the Privy Council under section 25A shall be subject to –
- (a) annulment in pursuance of a resolution of either House of Parliament, or 20
 - (b) where the regulations include provision which would be within the legislative competence of the Scottish Parliament if it were included in an Act of that Parliament, annulment in pursuance of a resolution of either House of Parliament or the Scottish Parliament.” 25
- (4) In paragraph 14 of Schedule 7 to that Act (payments and loans to Authority), after sub-paragraph (2) insert –
- “(2A) The Authority may borrow money for the purposes of or in connection with its functions; and sub-paragraphs (3) and (4) are without prejudice to the generality of this sub-paragraph.” 30
- (5) In that paragraph, omit sub-paragraphs (5) and (6).
- 209 Power to advise regulatory bodies, investigate complaints, etc.**
- (1) After section 25A of the National Health Service Reform and Health Care Professions Act 2002 insert – 35
- “25B Power of the Authority to advise regulatory bodies etc.**
- (1) The Authority may, for the purpose of assisting the Authority in its performance of its functions under this group of sections, provide advice or provide auditing services to – 40
- (a) a regulatory body;
 - (b) a body which has functions (whether or not relating to health or social care) corresponding to those of a regulatory body.
- (2) A body to which the Authority provides advice or auditing services under this section must pay such fee as the Authority may determine.

- (3) In this section, “this group of sections” has the meaning given by section 25(5) but does not include section 26A.”
- (2) In section 28(1) of that Act (power to make regulations about investigation by the Authority of complaints about regulatory bodies), for “The Secretary of State” substitute “The Privy Council”. 5
- (3) In section 38(2) of that Act (regulations and orders), omit “regulations under section 28 or”.

210 Accountability and governance

- (1) Schedule 7 to the National Health Service Reform and Health Care Professions Act 2002 (constitution etc. of the Authority) is amended as follows. 10
- (2) In paragraph 4 (membership and chair) –
- (a) in paragraph (e), for “the Secretary of State” substitute “the Privy Council”, and
- (b) in paragraph (f), for “two executive members” substitute “one executive member”. 15
- (3) In paragraph 6 (appointments), for “The Secretary of State” substitute “The Privy Council”.
- (4) In paragraph 10 (remuneration and allowances) –
- (a) in each of sub-paragraphs (1) and (2), for “the Secretary of State” substitute “the Authority”, and 20
- (b) for sub-paragraphs (3) and (4) substitute –
- “(3) The Authority may provide for the payment of such pension, allowance or gratuities as it may determine to or in respect of a person who is or has been the chair or any other member of the Authority. 25
- (4) The Authority may, where it considers there are special circumstances that make it right for a person ceasing to hold office as chair of the Authority to receive compensation, pay the person such compensation as it may determine.”
- (5) In paragraph 11 (employees) – 30
- (a) in sub-paragraph (1), for “members” substitute “member”, and
- (b) in sub-paragraph (2), for “members must be employees” substitute “member must be an employee”.
- (6) In paragraph 15 (accounts) – 35
- (a) in each of sub-paragraphs (1) and (2), for “the Secretary of State” substitute “the Privy Council”, and
- (b) in sub-paragraph (3) –
- (i) omit “the Secretary of State and”, and
- (ii) for “the Secretary of State” substitute “the Privy Council”.
- (7) In paragraph 16 (reports and other information), after sub-paragraph (1A) insert – 40
- “(1B) The Authority must, by such date in each year as the Privy Council determines, publish –

- (a) a strategic plan for the Authority for the coming financial year, and
 - (b) a strategic plan for the Authority for such of the subsequent financial years as the Authority may determine.”
- (8) In sub-paragraph (2) of that paragraph, after “its report for that year” insert “, and a copy of each of its strategic plans published in that year,”. 5
- (9) In section 38 of that Act (regulations and orders), after subsection (3A) (inserted by section 208(3)) insert—
 - “(3B) A statutory instrument containing regulations made by the Privy Council under paragraph 6 of Schedule 7 is subject to annulment in pursuance of a resolution of either House of Parliament.” 10

211 Appointments to regulatory bodies

After section 25B of the National Health Service Reform and Health Care Professions Act 2002 insert—

- “25C Appointments to regulatory bodies 15**
- (1) The Privy Council and a regulatory body may make arrangements for the regulatory body or other persons to assist the Privy Council in connection with its exercise of its appointment power in relation to the regulatory body.
 - (2) The Privy Council and the Authority may make arrangements for the Authority to assist the Privy Council in connection with— 20
 - (a) its exercise of its appointment power in relation to a regulatory body;
 - (b) its exercise of its power under paragraph 4 of Schedule 7.
 - (3) The Privy Council may make arrangements with any other person to assist it in connection with— 25
 - (a) its exercise of its appointment power in relation to a regulatory body;
 - (b) its exercise of its power under paragraph 4 of Schedule 7.
 - (4) The Scottish Ministers and the Authority may make arrangements for the Authority to assist them in connection with their exercise of their power under that paragraph. 30
 - (5) The Welsh Ministers and the Authority may make arrangements for the Authority to assist them in connection with their exercise of their power under that paragraph. 35
 - (6) The Department of Health, Social Services and Public Safety in Northern Ireland may make arrangements for the Authority to assist the Department in connection with its exercise of its power under that paragraph.
 - (7) In this section, “regulatory body” does not include the Pharmaceutical Society of Northern Ireland. 40
 - (8) In this section, “appointment power” means—
 - (a) in relation to the General Medical Council, the power under paragraph 1A(2) of Schedule 1 to the Medical Act 1983,

- (b) in relation to the General Dental Council, the power under paragraph 1A(2) of Schedule 1 to the Dentists Act 1984,
 - (c) in relation to the General Optical Council, the power under paragraph 1A(2) of Schedule 1 to the Opticians Act 1989,
 - (d) in relation to the General Osteopathic Council, the power under paragraph 1A(2) of the Schedule to the Osteopaths Act 1993, 5
 - (e) in relation to the General Chiropractic Council, the power under paragraph 1A(2) of Schedule 1 to the Chiropractors Act 1994,
 - (f) in relation to the General Pharmaceutical Council, the power under paragraph 1(2) of Schedule 1 to the Pharmacy Order 2010 (S.I. 2010/231), 10
 - (g) in relation to the Nursing and Midwifery Council, the power under paragraph 1A(2) of Schedule 1 to the Nursing and Midwifery Order 2001 (S.I. 2002/253), and 15
 - (h) in relation to the Health and Care Professions Council, the power under paragraph 1A(2) of Schedule 1 to the Health and Social Work Professions Order 2001 (S.I. 2002/254).
- (9) A reference to assisting in connection with the exercise of a power does not include a reference to exercising the power.” 20

212 Establishment of voluntary registers

After section 25C of the National Health Service Reform and Health Care Professions Act 2002 insert—

“25D Power of regulatory bodies to establish voluntary registers

- (1) A regulatory body may establish and maintain a voluntary register of persons who are (and, where the body thinks appropriate, persons who have been)— 25
 - (a) unregulated health professionals;
 - (b) unregulated health care workers;
 - (c) unregulated social care workers in England; 30
 - (d) participating in studies that come within subsection (2) or (3).
- (2) Studies come within this subsection if they are studies for the purpose of becoming a member of—
 - (a) a profession to which section 60(2) of the Health Act 1999 applies, or 35
 - (b) the social work profession in England.
- (3) Studies come within this subsection if they are studies for the purpose of becoming—
 - (a) an unregulated health professional,
 - (b) an unregulated health care worker, or 40
 - (c) an unregulated social care worker in England.
- (4) A regulatory body may establish and maintain a register under subsection (1)(a), (b) or (c) of only such persons as are (or have been) engaged in work that supports, or otherwise relates to, work engaged in by members of a profession which the body regulates; but this subsection does not apply to the Health and Care Professions Council. 45

- (5) A regulatory body may establish and maintain a register under subsection (1)(d) of only such persons as are (or have been) participating in studies for the purpose of—
- (a) in the case of studies coming within subsection (2), becoming a member of a profession which the body regulates, 5
 - (b) in the case of studies coming within subsection (3)(a), becoming a member of a profession for which the body maintains a voluntary register, or
 - (c) in the case of studies coming within subsection (3)(b) or (c), engaging in work in respect of which the body maintains a voluntary register. 10
- (6) The General Pharmaceutical Council may establish and maintain a register under subsection (1) of only such persons as are (or have been) engaged in work or participating in studies in England, Wales or Scotland. 15
- (7) The Pharmaceutical Society of Northern Ireland may establish and maintain a register under subsection (1) of only such persons as are (or have been) engaged in work, or are participating in studies, in Northern Ireland.
- (8) A regulatory body may establish and maintain a register under subsection (1) jointly with one or more other regulatory bodies. 20
- (9) Where regulatory bodies establish and maintain a register in reliance on subsection (8)—
- (a) subsections (4) and (5) apply to each body (but subsection (4) does not apply to the Health and Care Professions Council), 25
 - (b) subsection (6) applies to the General Pharmaceutical Council if it is one of the bodies, and
 - (c) subsection (7) applies to the Pharmaceutical Society of Northern Ireland if it is one of the bodies.
- (10) But subsections (6) and (7) do not apply where the bodies concerned are or include the General Pharmaceutical Council and the Pharmaceutical Society of Northern Ireland. 30
- (11) Accordingly, in those circumstances, the General Pharmaceutical Council and the Pharmaceutical Society of Northern Ireland may jointly establish and maintain a register of persons who are (and, where they consider appropriate, have been) engaged in work or participating in studies anywhere in the United Kingdom. 35
- (12) A request to be registered, or to continue to be registered, in a register established under subsection (1) must be accompanied by a fee of such amount as the regulatory body (or bodies) concerned may determine. 40
- 25E Section 25D: interpretation**
- (1) This section applies for the purposes of section 25D.
- (2) “Voluntary register” means a register of persons in which a person is not required by an enactment to be registered in order to be entitled to—
- (a) use a title,
 - (b) practise as a member of a profession, 45

- (c) engage in work that involves the provision of health care,
 - (d) engage in work of a description given in section 60(2ZC) of the Health Act 1999 (social care work in England), or
 - (e) participate in studies that come within section 25D(2) or (3).
- (3) Where an enactment imposes a requirement of that kind which applies to part only of the United Kingdom, a register is to be regarded as a voluntary register in so far as it applies to any part of the United Kingdom to which the requirement does not apply. 5
- (4) Subsection (2) does not apply in relation to an enactment that imposes a requirement of that kind which applies – 10
- (a) only to work or practice of a particular kind, and
 - (b) only when work or practice of that kind is engaged in for particular purposes.
- (5) In subsections (2) to (4), “enactment” means an enactment contained in, or in an instrument made under – 15
- (a) an Act of Parliament,
 - (b) an Act of the Scottish Parliament,
 - (c) an Act or Measure of the National Assembly for Wales, or
 - (d) Northern Ireland legislation.
- (6) “Unregulated health professional” means a member of a profession – 20
- (a) which is concerned with the physical or mental health of individuals, but
 - (b) to which section 60(2) of the Health Act 1999 does not apply.
- (7) “Unregulated health care worker” means a person engaged in work which – 25
- (a) involves the provision of health care, but
 - (b) is not work which may be engaged in only by members of a profession.
- (8) In subsections (2) and (7), “health care” includes – 30
- (a) all forms of health care for individuals, whether relating to physical or mental health, and
 - (b) procedures that are similar to forms of medical or surgical care but are not provided in connection with a medical condition.
- (9) “Unregulated social care worker in England” means a person engaged in social care work in England within the meaning of section 60 of the Health Act 1999. 35
- (10) But a person is not to be regarded as being (or having been) engaged in work as an unregulated social care worker merely because the person is (or has been) participating in a course of the description given in subsection (2ZC)(o) of that section (social work courses). 40
- (11) “The social work profession in England” has the meaning given in that section.
- 25F Establishment of voluntary register: impact assessment**
- (1) Before establishing a register under section 25D, a regulatory body – 45
- (a) must make an assessment of the likely impact of doing so, and

- (b) must consult such persons as it considers appropriate.
- (2) In performing the duty under subsection (1)(a), the body must have regard to such guidance relating to the preparation of impact assessments as it considers appropriate.
- (3) An assessment under this section must, in particular, include an assessment of the likely impact of establishing the register on—
 - (a) persons who would be eligible for inclusion in the register;
 - (b) persons who employ persons who would be eligible for inclusion in the register;
 - (c) users of health care, users of social care in England and users of social work services in England.
- (4) A regulatory body must publish any assessment it makes under this section.
- (5) In deciding whether to establish a register under section 25D, a regulatory body must have regard to the assessment it made under this section in relation to the register.”

213 Accreditation of voluntary registers

- (1) After section 25F of the National Health Service Reform and Health Care Professions Act 2002 insert—
 - “25G Power of the Authority to accredit voluntary registers**
 - (1) Where a regulatory body or other person maintains a voluntary register, the Authority may, on an application by the body or other person, take such steps as it considers appropriate for the purpose of establishing whether the register meets such criteria as the Authority may from time to time set (“accreditation criteria”).
 - (2) Accreditation criteria may, in particular, relate to—
 - (a) the provision to the Authority of information in connection with the establishment, operation or maintenance of register;
 - (b) publication of the names of persons included in the register or who have been removed from the register (whether voluntarily or otherwise);
 - (c) the establishment or operation of a procedure for appeals from decisions relating to inclusion in or removal from the register.
 - (3) If the Authority is satisfied that a voluntary register meets the accreditation criteria, it may accredit the register.
 - (4) The Authority may carry out periodic reviews of the operation of registers accredited under this section for the purpose of establishing whether they continue to meet the accreditation criteria.
 - (5) If, on a review under subsection (4), the Authority is satisfied that a voluntary register no longer meets the accreditation criteria, the Authority may remove or suspend, or impose conditions on, the accreditation of the register.
 - (6) The Authority may refuse to accredit a register, or to continue to accredit a register, unless the person who maintains the register pays a fee of such amount as the Authority may determine.

- (7) The Authority must publish such accreditation criteria as it sets.
- (8) The Authority may publish a list of registers accredited under this section.
- (9) “Voluntary register” has the meaning given in section 25E.
- 25H Accreditation of voluntary register: impact assessment** 5
- (1) Before accrediting a register under section 25G, the Authority –
- (a) must make an assessment of the likely impact of doing so, and
 - (b) must consult such persons as it considers appropriate.
- (2) For that purpose, the Authority must have regard to such guidance relating to the preparation of impact assessments as it considers appropriate. 10
- (3) An assessment under this section must, in particular, include an assessment of the likely impact of accrediting the register on –
- (a) persons who are, or are eligible to be, included in the register;
 - (b) persons who employ persons who are, or are eligible to be, included in the register; 15
 - (c) users of health care, users of social care in England and users of social work services in England.
- (4) For the purposes of subsection (3), the Authority may request the person who maintains the register to provide it with such information as it specifies; and if the person refuses to comply with the request, the Authority may refuse to accredit the register. 20
- (5) The Authority may publish any assessment it makes under this section.
- (6) In deciding whether to accredit a register under section 25G, the Authority must have regard to its assessment under this section in relation to the register. 25
- 25I Functions of the Authority in relation to accredited voluntary registers**
- (1) The Authority has the following functions –
- (a) to promote the interests of users of health care, users of social care in England, users of social work services in England and other members of the public in relation to the performance of voluntary registration functions, 30
 - (b) to promote best practice in the performance of voluntary registration functions, and
 - (c) to formulate principles of good governance in the performance of voluntary registration functions and to encourage persons who maintain or operate accredited voluntary registers to conform to those principles. 35
- (2) In this section –
- (a) a reference to the performance of voluntary registration functions is a reference to the maintenance or operation of an accredited voluntary register, and 40
 - (b) “accredited voluntary register” means a register accredited under section 25G.”
- (2) In section 26 of that Act (general powers and duties of the Authority), after 45

- subsection (2) insert –
- “(2A) A reference in subsection (2) to a regulatory body includes a reference to a person other than a regulatory body who has voluntary registration functions; and for that purpose, the only functions that person has are the person’s voluntary registration functions.” 5
- (3) After subsection (3) of that section insert –
- “(3A) A reference in subsection (3) to a regulatory body includes a reference to a person other than a regulatory body in so far as that person has voluntary registration functions.”
- (4) After subsection (4) of that section insert – 10
- “(4A) For the purposes of paragraph (c) of subsection (4), the reference in that subsection to subsection (3) includes a reference to subsection (3) as construed in accordance with subsection (3A).”
- (5) After subsection (12) of that section insert –
- “(13) In this section, “voluntary registration functions” is to be construed in accordance with section 25I.” 15
- (6) In section 26A of that Act (powers of Secretary of State and devolved authorities to request advice etc.), after subsection (1A) (inserted by section 207(3)), insert –
- “(1B) The Secretary of State may request the Authority for advice on any matter connected with accreditation of registers under section 25G; and the Authority must comply with such a request. 20
- (1C) The Welsh Ministers, the Scottish Ministers or the relevant Northern Ireland department may request the Authority for advice on any matter connected with accreditation of registers under section 25G other than accreditation of registers referred to in subsection (1D); and the Authority must comply with such a request. 25
- (1D) The registers are registers of persons who are or have been –
- (a) unregulated social care workers in England,
 - (b) participating in studies for the purpose of becoming a member of the social work profession in England; 30
 - (c) participating in studies for the purpose of becoming an unregulated social care worker in England.
- (1E) In subsection (1D), “the social work profession in England” and “unregulated social care worker in England” each have the meaning given in section 25E.” 35
- (7) In section 26B of that Act (duty of the Authority to inform and consult the public), after subsection (1) insert –
- “(1A) The references in subsection (1) to the Authority’s functions do not include a reference to its accreditation functions. 40
- (1B) For the purpose of ensuring that members of the public are informed about the exercise by the Authority of its accreditation functions, the Authority may publish or provide in such manner as it thinks fit information about the exercise of those functions.

- (1C) For the purposes of this section, the Authority’s accreditation functions are—
- (a) its functions under sections 25G to 25I,
 - (b) its functions under section 26 that relate to the performance of voluntary registration functions (within the meaning given by section 25I), and
 - (c) its function under section 26A(1B).”
- (8) In subsection (2) of that section, after “subsection (1)” insert “or (1B)”.
- (9) At the end of subsection (4) of that section insert “(other than its accreditation functions)”.

Consequential provision etc.

214 Consequential provisions and savings, etc.

- (1) Parts 1 to 3 of Schedule 14 (which contain minor and consequential amendments and savings relating to the preceding provisions of this Part) have effect. 15
- (2) The Privy Council may by order make transitional, transitory or saving provision in connection with the commencement of the preceding provisions of this Part.
- (3) The quorum for the exercise of the power under subsection (2) is two.
- (4) Anything done by the Privy Council under subsection (2) is sufficiently signified by an instrument signed by the Clerk of the Council. 20
- (5) In section 38 of the National Health Service Reform and Health Care Professions Act 2002 (regulations and orders), after subsection (4) insert—
 - “(4A) The quorum for the exercise by the Privy Council of the power under section 25A or 28 or paragraph 6 of Schedule 7 is two; and anything done by the Privy Council under either of those sections or that paragraph is sufficiently signified by an instrument signed by the Clerk of the Council.” 25
- (6) The amendments made by this Part to an Order in Council under section 60 of the Health Act 1999 do not affect the power to make a further Order in Council under that section amending or revoking provision made by those amendments. 30

The Office of the Health Professions Adjudicator

215 Abolition of the Office of the Health Professions Adjudicator

- (1) The Office of the Health Professions Adjudicator (“the OHPA”) is abolished. 35
- (2) In Part 2 of the Health and Social Care Act 2008 (regulation of health professions etc.), omit sections 98 to 110 and Schedules 6 and 7 (establishment etc. of the OHPA).
- (3) All property, rights and liabilities to which the OHPA is entitled or subject immediately before the commencement of subsection (1) (including rights and liabilities relating to staff) are transferred to the Secretary of State. 40

- (4) Part 4 of Schedule 14 (which contains consequential amendments and savings in relation to the OHPA) has effect.

PART 8

THE NATIONAL INSTITUTE FOR HEALTH AND CARE EXCELLENCE

Establishment and general duties 5

216 The National Institute for Health and Care Excellence

- (1) There is to be a body corporate known as the National Institute for Health and Care Excellence (referred to in this Part as “NICE”).
- (2) Schedule 15 (which makes further provision about NICE) has effect.

217 General duties 10

- (1) In exercising its functions NICE must have regard to—
- (a) the broad balance between the benefits and costs of the provision of health services or of social care in England,
 - (b) the degree of need of persons for health services or social care in England, and 15
 - (c) the desirability of promoting innovation in the provision of health services or of social care in England.
- (2) NICE must exercise its functions effectively, efficiently and economically.
- (3) In this Part—
- “health services” means services which must or may be provided as part of the health service in England; 20
 - “social care” includes all forms of personal care and other practical assistance provided for individuals who by reason of age, illness, disability, pregnancy, childbirth, dependence on alcohol or drugs, or any other similar circumstances, are in need of such care or other assistance. 25

Functions: quality standards

218 Quality standards

- (1) The relevant commissioner may direct NICE to prepare statements of standards in relation to the provision of— 30
- (a) NHS services,
 - (b) public health services, or
 - (c) social care in England.
- (2) In this Part such a statement is referred to as a “quality standard”.
- (3) In preparing a quality standard NICE must consult the public and, for that purpose, may publish drafts of the standard. 35
- (4) NICE must keep a quality standard under review and may revise it as it considers appropriate.

- (5) A quality standard (and any revised standard) –
- (a) must be endorsed by the relevant commissioner, and
 - (b) must not be published by NICE unless the relevant commissioner so requires.
- (6) The relevant commissioner may require NICE – 5
- (a) to publish the standard (or revised standard) generally or to persons specified by the relevant commissioner, and
 - (b) to do so in the manner specified by the relevant commissioner.
- (7) NICE must – 10
- (a) establish a procedure for the preparation of quality standards, and
 - (b) consult such persons as it considers appropriate in establishing that procedure.
- (8) Subsection (9) applies in a case where the Secretary of State and the Board each has power under this section to give NICE a direction to prepare a quality standard in relation to the same matter or connected matters. 15
- (9) In such a case –
- (a) the Secretary of State and the Board may issue a joint direction under subsection (1), and
 - (b) if they do so, NICE must prepare a joint quality standard in respect of the matter or matters concerned. 20
- (10) In this section “the relevant commissioner” –
- (a) in relation to a quality standard in relation to the provision of NHS services, means the Board, and
 - (b) in relation to a quality standard in relation to the provision of public health services or of social care in England, means the Secretary of State, 25
- and a reference to the relevant commissioner in relation to a joint quality standard is a reference to both the Secretary of State and the Board.
- (11) In this Part –
- “NHS services” means services the provision of which is arranged by the Board or a commissioning consortium under the National Health Service Act 2006 (including pursuant to arrangements made under section 12 of that Act); 30
- “public health services” means services provided pursuant to the functions of the Secretary of State or a local authority under section 2A or 2B of, or Schedule 1 to, that Act. 35

219 Supply of quality standards to other persons

- (1) Regulations may confer powers on NICE in relation to the supply by NICE of quality standards to – 40
- (a) devolved authorities, and
 - (b) other persons (whether or not in the United Kingdom).
- (2) The regulations may in particular –
- (a) confer power on NICE to make such adjustments as NICE considers appropriate to a quality standard for the purposes of supplying it as mentioned in subsection (1), and 45

- (b) provide for the imposition by NICE of charges for or in connection with the supply of a quality standard as so mentioned.
- (3) Provision made under subsection (2)(b) may include provision for charges to be calculated on the basis NICE considers to be the appropriate commercial basis. 5
- (4) In this section “devolved authority” means—
 - (a) the Scottish Ministers,
 - (b) the Welsh Ministers, and
 - (c) the Department of Health, Social Services and Public Safety in Northern Ireland. 10

220 Advice or guidance to the Secretary of State or the Board

- (1) NICE must give advice or guidance to the Secretary of State or the Board on any quality matter referred to it by the Secretary of State or (as the case may be) the Board.
- (2) “Quality matter”— 15
 - (a) in relation to the Secretary of State, means any matter in relation to which the Secretary of State has the power to direct NICE to prepare a quality standard, and
 - (b) in relation to the Board, means any matter in relation to which the Board has the power to direct NICE to prepare a quality standard. 20

Advice, guidance etc.

221 Advice, guidance, information and recommendations

- (1) Regulations may confer functions on NICE in relation to the giving of advice or guidance, provision of information or making of recommendations about any matter concerning or connected with the provision of— 25
 - (a) NHS services,
 - (b) public health services, or
 - (c) social care in England.
- (2) The regulations may provide that a function conferred under subsection (1)(a)— 30
 - (a) is only exercisable on the direction of the Secretary of State or the Board;
 - (b) is subject to directions given by the Secretary of State or (as the case may be) the Board about NICE’s exercise of the function.
- (3) The regulations may provide that a function conferred under subsection (1)(b) or (c)— 35
 - (a) is only exercisable on the direction of the Secretary of State;
 - (b) is subject to directions given by the Secretary of State about NICE’s exercise of the function.
- (4) Provision made under subsection (2)(b) or (3)(b) must not permit a direction to be given about the substance of advice, guidance or recommendations of NICE. 40
- (5) The regulations may make provision about—

- (a) the types of recommendations in relation to which an appeal may be brought,
- (b) the persons who may bring an appeal,
- (c) the grounds on which an appeal may be brought, and
- (d) the persons by whom an appeal is to be heard. 5

223 Training

- (1) Regulations may confer functions on NICE in relation to providing, or facilitating the provision of, training in connection with any matter concerning or connected with the provision of –
 - (a) NHS services, 10
 - (b) public health services, or
 - (c) social care in England.
- (2) The regulations may provide that a function conferred under subsection (1)(a) –
 - (a) is only exercisable on the direction of the Board; 15
 - (b) is subject to directions given by the Board about NICE’s exercise of the function.
- (3) The regulations may provide that a function conferred under subsection (1)(b) or (c) –
 - (a) is only exercisable on the direction of the Secretary of State; 20
 - (b) is subject to directions given by the Secretary of State about NICE’s exercise of the function.
- (4) The regulations may provide for the imposition by NICE of charges for or in connection with the provision of training.
- (5) Provision made under subsection (4) may include provision for charges to be calculated on the basis NICE considers to be the appropriate commercial basis. 25

224 Advisory services

- (1) Regulations may confer functions on NICE in relation to the giving of advice to persons (whether or not in the United Kingdom) in relation to any matter concerning or connected with –
 - (a) the provision of health care, 30
 - (b) the protection or improvement of public health, or
 - (c) the provision of social care.
- (2) The regulations may make provision about the imposition of charges by NICE for or in connection with the giving of such advice. 35
- (3) Provision made under subsection (2) may include provision for charges to be calculated on the basis NICE considers to be the appropriate commercial basis.
- (4) In this Part “health care” includes all forms of health care provided for individuals whether relating to physical or mental health and also includes procedures that are similar to forms of medical or surgical care but are not provided in connection with a medical condition. 40

225 Commissioning guidance

- (1) The Board may direct NICE to exercise any of the Board’s functions in relation to the preparation of the guidance required to be published by the Board under section 14V of the National Health Service Act 2006 (the “commissioning guidance”). 5
- (2) A direction under subsection (1) may direct NICE to exercise the functions in such manner and within such period as may be specified in the direction.
- (3) If requested to do so, NICE must –
- (a) provide the Board with information or advice on such matters connected to the Board’s functions in respect of commissioning guidance as may be specified in the request, and 10
 - (b) disseminate commissioning guidance in such manner as may be specified in the request.

*Functions: other***226 NICE’s charter** 15

- (1) Regulations may make provision requiring NICE to publish a document explaining the functions of NICE and how NICE intends to exercise them (referred to in this section as “the charter”).
- (2) The regulations may, in particular, make provision about –
- (a) the information to be provided in the charter, 20
 - (b) the timing of preparation of the charter,
 - (c) review and revision by NICE of the charter, and
 - (d) the manner in which the charter must or may be published.

227 Additional functions

- (1) NICE may do any of the following – 25
- (a) acquire, produce, manufacture and supply goods,
 - (b) acquire land by agreement and manage and deal with land,
 - (c) supply accommodation to any person,
 - (d) supply services to any person and provide new services,
 - (e) provide instruction for any person, and 30
 - (f) develop and exploit ideas and exploit intellectual property.
- (2) But NICE may exercise a power under subsection (1) only –
- (a) if doing so is connected with the provision of health care or social care, and
 - (b) to the extent that its exercise does not to any significant extent interfere 35 with the performance by NICE of its functions.
- (3) NICE may –
- (a) charge for anything it does in the exercise of a power under subsection (1), and
 - (b) calculate any such charge on the basis that it considers to be the 40 appropriate commercial basis.

228 Arrangements with other bodies

- (1) NICE may arrange with any person or body to provide, or assist in providing, any service which NICE is required or authorised to provide by virtue of this Part.
- (2) The power under this section may be exercised on such terms as may be agreed, including terms as to the making of payments by or to NICE. 5

229 Failure by NICE to discharge any of its functions

- (1) The Secretary of State may give a direction to NICE if the Secretary of State considers that NICE –
 - (a) is failing or has failed to discharge any of its functions, or 10
 - (b) is failing or has failed properly to discharge any of its functions.
- (2) A direction under subsection (1) may direct NICE to discharge such of those functions, and in such manner and within such period or periods, as may be specified in the direction.
- (3) If NICE fails to comply with a direction under subsection (1), the Secretary of State may – 15
 - (a) discharge the functions to which it relates, or
 - (b) make arrangements for any other person to discharge them on the Secretary of State’s behalf.

230 Protection from personal liability 20

- (1) Section 265 of the Public Health Act 1875 (which relates to the protection of members and officers of certain authorities from personal liability) has effect as if there were included in the authorities referred to in that section a reference to NICE.
- (2) In its application to NICE as provided for by subsection (1), section 265 of that Act has effect as if any reference in that section to the Public Health Act 1875 were a reference to this Act. 25

Supplementary

231 Interpretation of this Part

- In this Part – 30
- “the Board” means the National Health Service Commissioning Board;
 - “health care” has the meaning given by section 224;
 - “health services” has the meaning given by section 217;
 - “the health service” has the same meaning as in the National Health Service Act 2006 (see section 275(1) of that Act); 35
 - “NHS services” has the meaning given by section 218;
 - “public health services” has the meaning given by section 218;
 - “quality standard” has the meaning given by section 218;
 - “social care” has the meaning given by section 217.

232 Dissolution of predecessor body

The Special Health Authority known as the National Institute for Health and Clinical Excellence is abolished.

233 Consequential provision

Schedule 16 (which contains consequential provision) has effect. 5

PART 9

HEALTH AND ADULT SOCIAL CARE SERVICES: INFORMATION

CHAPTER 1

INFORMATION STANDARDS

234 Powers to publish information standards 10

- (1) The Secretary of State or the National Health Service Commissioning Board (referred to in this Chapter as “the Board”) may prepare and publish an information standard.
- (2) For the purposes of this Part “an information standard” is a document containing standards in relation to the processing of information. 15
- (3) The Secretary of State may exercise the power under subsection (1) only in relation to information concerning, or connected with, the provision of health services or of adult social care in England.
- (4) The Board may exercise the power under subsection (1) only in relation to information concerning, or connected with, the provision of NHS services. 20
- (5) An information standard must include guidance about the implementation of the standard.
- (6) The following must have regard to an information standard published under this section – 25
 - (a) the Secretary of State;
 - (b) the Board;
 - (c) any public body which exercises functions to which the information standard relates in connection with the provision of health services or of adult social care in England.
- (7) In this section – 30

“adult social care” –

 - (a) includes all forms of personal care and other practical assistance provided for individuals who by reason of age, illness, disability, pregnancy, childbirth, dependence on alcohol or drugs, or any other similar circumstances, are in need of such care or other assistance, but 35
 - (b) does not include anything provided by an establishment or agency for which Her Majesty’s Chief Inspector of Education, Children’s Services and Skills is the registration authority under section 5 of the Care Standards Act 2000; 40

- “health services” means services which must or may be provided as part of the health service in England; and for that purpose “the health service” has the same meaning as in the National Health Service Act 2006 (see section 275(1) of that Act);
- “NHS services” means services the provision of which is arranged by the Board or a commissioning consortium under the National Health Service Act 2006 (including pursuant to arrangements made under section 12 of that Act);
- “processing” has the same meaning as in the Data Protection Act 1998 (see section 1 of that Act);
- “public body” means a body or other person whose functions –
- (a) are of a public nature, or
 - (b) include functions of that nature,
- but in the latter case, the body or person is a public body to the extent only of those functions.

235 Information standards: supplementary

- (1) Before publishing an information standard, the Secretary of State or the Board must consult such persons as the Secretary of State or (as the case may be) the Board considers appropriate.
- (2) For the purposes of section 234 the Secretary of State or the Board may adopt an information standard prepared or published by another person.

CHAPTER 2

THE HEALTH AND SOCIAL CARE INFORMATION CENTRE

Establishment and general duties

236 The Health and Social Care Information Centre

- (1) There is to be a body corporate known as the Health and Social Care Information Centre (referred to in this Chapter as “the Information Centre”).
- (2) Schedule 17 (which makes further provision about the Information Centre) has effect.

237 General duties

- (1) In exercising its functions the Information Centre must have regard to –
 - (a) the information standards published by the Secretary of State or the Board under section 234,
 - (b) such guidance issued by the Secretary of State as the Secretary of State may require,
 - (c) such guidance issued by the Board as the Board may require, and
 - (d) the need to promote the effective, efficient and economic use of resources in the provision of health services and of adult social care in England.
- (2) The Information Centre must –
 - (a) seek to minimise the burdens it imposes on others, and

- (b) exercise its functions effectively, efficiently and economically.
- (3) In this Chapter –
- “adult social care” –
- (a) includes all forms of personal care and other practical assistance provided for individuals who by reason of age, illness, disability, pregnancy, childbirth, dependence on alcohol or drugs, or any other similar circumstances, are in need of such care or other assistance, but 5
- (b) does not include anything provided by an establishment or agency for which Her Majesty’s Chief Inspector of Education, Children’s Services and Skills is the registration authority under section 5 of the Care Standards Act 2000; 10
- “health services” means services which must or may be provided as part of the health service in England.

Functions: information systems 15

238 Powers to direct Information Centre to establish information systems

- (1) The Secretary of State or the Board may direct the Information Centre to establish and operate a system for the collection, analysis and publication or other dissemination of information of a description specified in the direction.
- (2) A direction may be given under subsection (1) by the Secretary of State only if – 20
- (a) it is in respect of information which the Secretary of State considers it is necessary or expedient for the Secretary of State to have in relation to the exercise by the Secretary of State of the Secretary of State’s functions in connection with the provision of health services or of adult social care in England, or 25
- (b) the Secretary of State otherwise considers it to be in the interests of the health service in England or of the recipients or providers of adult social care in England for the direction to be given.
- (3) A direction may be given under subsection (1) by the Board only if it is in respect of information which the Board considers it is necessary or expedient for the Board to have in relation to its exercise of functions in connection with the provision of NHS services. 30
- (4) In subsection (3) “NHS services” means services the provision of which is arranged by the Board or a commissioning consortium under the National Health Service Act 2006 (including pursuant to arrangements made under section 12 of that Act). 35
- (5) Before giving a direction under subsection (1) the Secretary of State or (as the case may be) the Board must consult the Information Centre.
- (6) A function conferred by a direction given by the Secretary of State or the Board under subsection (1) is subject to directions given by the Secretary of State or (as the case may be) the Board about the Information Centre’s exercise of the function. 40

239 Powers to request Information Centre to establish information systems

- (1) Any person (including a devolved authority) may request the Information Centre to establish and operate a system for the collection, analysis and publication or other dissemination of information of a description specified in the request. 5
- (2) A request under subsection (1) must relate to information which the person considers it is necessary or expedient for the person to have in relation to the person's exercise of functions, or carrying out of activities, in connection with the provision of health care or adult social care.
- (3) The Information Centre must comply with a mandatory request unless the Centre considers that the request relates to information of a description prescribed in regulations. 10
- (4) For the purposes of this Chapter a “mandatory request” is a request under subsection (1) which –
 - (a) is made by a relevant body, and 15
 - (b) relates to information which the body considers it is necessary or expedient for the body to have in relation to its discharge of a duty in connection with the provision of health services or of adult social care in England.
- (5) The Secretary of State or the Board may direct the Information Centre not to comply with a request specified in the direction which is not a mandatory request. 20
- (6) The Secretary of State or the Board may direct the Information Centre to comply with a request specified in the direction which was made by a person outside the United Kingdom. 25
- (7) Subsection (8) applies where the Information Centre has discretion under this section as to whether to comply with –
 - (a) a mandatory request, or
 - (b) other request under subsection (1).
- (8) In deciding whether to comply with the request, the Information Centre –
 - (a) must in particular consider whether doing so would interfere to an unreasonable extent with the exercise by the Centre of any of its functions, and 30
 - (b) may take into account the extent to which the relevant body or other person making the request has had regard to advice or guidance given by the Centre under section 245. 35
- (9) In this section “relevant body” means –
 - (a) Monitor,
 - (b) the Care Quality Commission,
 - (c) the National Institute for Health and Care Excellence, and 40
 - (d) such other persons as may be prescribed in regulations.
- (10) In this Chapter “health care” includes all forms of health care provided for individuals whether relating to physical or mental health and also includes procedures that are similar to forms of medical or surgical care but are not provided in connection with a medical condition. 45

240 Requests under section 239: supplementary

- (1) The Information Centre must publish procedures for –
 - (a) the making and considering of requests under section 239, and
 - (b) the reconsideration by the Centre of a decision not to comply with such a request. 5
- (2) The procedure mentioned in subsection (1)(b) must provide for the person who made the request to have an opportunity to make representations to the Information Centre within a reasonable period for the purposes of the reconsideration.
- (3) The Information Centre may charge a person a reasonable fee in respect of the cost of complying with a request made by that person under section 239. 10
- (4) Before making a request under section 239 a person must consult the Information Centre.
- (5) The Information Centre must publish details of –
 - (a) any mandatory request, and 15
 - (b) any other request under section 239 with which the Centre is obliged, or decides, to comply.

241 Information systems: supplementary

- (1) Before establishing an information system pursuant to a direction under section 238 or a request under section 239 the Information Centre must consult –
 - (a) the person who gave the direction or made the request,
 - (b) representatives of other persons who the Centre considers are likely to use the information to which the direction or request relates,
 - (c) representatives of persons from whom that information will be collected, and 25
 - (d) such other persons as the Centre considers appropriate.
- (2) If the Information Centre reasonably believes that there is no longer a need to retain information which it has collected pursuant to a direction under section 238 or a request under section 239, or information derived from such information, the Centre must destroy the information. 30

242 Powers to require and request provision of information

- (1) The Information Centre may –
 - (a) require a health or social care body to provide it with any information which the Centre considers it necessary or expedient for the Centre to have for the purposes of any function it exercises by virtue of this Chapter, and 35
 - (b) request any other person to provide it with such information.
- (2) A health or social care body must comply with a requirement under subsection (1)(a) by providing the information to the Information Centre in such form and manner, and within such period, as the Centre may specify. 40
- (3) If the Information Centre considers it appropriate to do so, the Centre may make a payment to any person who has provided information to the Centre

pursuant to a request made under subsection (1)(b) in respect of the costs to that person of doing so.

- (4) The Information Centre must publish a procedure for notifying health or social care bodies and other persons of requirements imposed, and requests made, under subsection (1). 5
- (5) In imposing requirements under this section the Information Centre must co-operate with any other person who is authorised to require the provision of information from a health or social care body.
- (6) In this Chapter “health or social care body” means a public body which exercises functions in connection with the provision of health services or of adult social care in England. 10

243 Publication of information

- (1) The Information Centre must publish all information which it collects pursuant to a direction under section 238 or a request under section 239 unless – 15
 - (a) the information is in a form which identifies any provider to whom the information relates or enables the identity of such a provider to be ascertained and the Centre, after taking into account the public interest as well as the interests of the provider, considers that it is not appropriate for the information to be published, 20
 - (b) the information is in a form which identifies any individual to whom the information relates who is not a provider or enables the identity of such an individual to be ascertained, or
 - (c) the information is of a description specified in a direction given to the Centre by the Secretary of State or the Board. 25
- (2) In subsection (1) “provider” means any person who provides health services or adult social care in England.
- (3) If a direction under section 238 or a mandatory request under section 239 does not specify the form and manner in which, and the intervals at which, the information to which the direction or (as the case may be) request relates is to be published, the Information Centre must publish the information in such form and such manner, and at such intervals, as it considers appropriate. 30
- (4) Where the Information Centre publishes information which it collects pursuant to a request under section 239 other than a mandatory request, the Centre – 35
 - (a) must publish the information in such form and such manner, and at such intervals, as it considers appropriate, and
 - (b) may disseminate the information in any other manner that it considers appropriate.
- (5) In considering the appropriate form, manner and intervals for publication of information under this section, the Information Centre must have regard to – 40
 - (a) the need for the information to be easily accessible,
 - (b) the persons who the Centre considers likely to use the information, and
 - (c) the uses to which the Centre considers the information is likely to be put. 45

244 Information Register

The Information Centre must maintain and publish a register containing descriptions of the information which has been collected by virtue of this Chapter.

245 Advice or guidance

5

- (1) The Information Centre –
 - (a) may give advice or guidance to any person mentioned in subsection (2) on any matter relating to the collection, analysis, publication or other dissemination of information, and
 - (b) must, if requested to do so by the Secretary of State or the Board, give advice or guidance on any such matter as may be specified in the request to –
 - (i) the Secretary of State or (as the case may be) the Board;
 - (ii) such other persons as may be specified in the request.
- (2) Those persons are –
 - (a) the Secretary of State,
 - (b) the Board,
 - (c) any person who makes, or is proposing to make, a request under section 239,
 - (d) any other health or social care body, and
 - (e) any other person (including a devolved authority) who collects, or is proposing to collect, information which relates to the provision of health care or adult social care.
- (3) A request under subsection (1)(b) made by the Secretary of State may, in particular, include a request for advice or guidance to be given to the Secretary of State or the Board about ways in which the burdens relating to the collection of information imposed on health or social care bodies and other persons may be minimised.
- (4) A health or social care body to whom advice or guidance is given under this section must have regard to the advice or guidance in exercising functions in connection with the provision of health services or of adult social care in England.

Quality of health and social care information

246 Assessment of quality of information

- The Information Centre must from time to time –
- (a) so far as they are applicable, assess the extent to which information it collects pursuant to a direction under section 238 or a request under 239 meets the information standards published under section 234, and
 - (b) publish a record of the results of the assessment.

247 Power to establish accreditation scheme

40

- (1) Regulations may make provision for the establishment and operation of a scheme for the accreditation of information service providers (“the accreditation scheme”).

- (2) The regulations may provide that the accreditation scheme is to be established and operated by the Information Centre or such other person as the Secretary of State may specify in the regulations (the “operator”).
- (3) The regulations may in particular confer power on the operator –
 - (a) to establish the procedure for accrediting information service providers under the scheme, 5
 - (b) to set the criteria to be met by a provider in order to be accredited (“the accreditation criteria”),
 - (c) to keep an accreditation under the scheme under review, and
 - (d) to charge a reasonable fee in respect of an application for accreditation. 10
- (4) The regulations may make provision requiring the operator –
 - (a) to publish details of the scheme, including in particular the accreditation criteria,
 - (b) to provide for the review of a decision to refuse an application for accreditation, and 15
 - (c) to provide advice to applicants for accreditation with a view to ensuring that they meet the accreditation criteria.
- (5) In this section “information service provider” means any person other than a public body who provides services involving the collection, analysis, publication or other dissemination of information in connection with the provision of health services or of adult social care in England. 20

Functions: other

248 Database of quality indicators

- (1) Regulations may make provision conferring functions on the Information Centre in connection with the establishment, maintenance and publication of a database of quality indicators in relation to the provision of health services and of adult social care in England. 25
- (2) The regulations may in particular make provision about –
 - (a) the persons who may propose a quality indicator for inclusion in the database, 30
 - (b) the giving of advice and guidance by the Information Centre to such persons in relation to such a proposal,
 - (c) the assessment and approval of quality indicators proposed for inclusion in the database by such person as the Secretary of State or the Board may direct, and 35
 - (d) the inclusion in the database of guidance about how providers may demonstrate performance measured against the quality indicators.
- (3) In this section a “quality indicator” means a factor by reference to which performance in the provision of services or care can be measured.

249 Power to confer functions in relation to identification of GPs 40

- (1) Regulations may make provision conferring functions on the Information Centre in connection with the verification of the identity of general medical practitioners for purposes connected with the health service in England.

- (2) In subsection (1) “general medical practitioners” means persons registered in the General Practitioner Register kept by the General Medical Council.

250 Additional functions

- (1) The Information Centre may do any of the following –
- (a) acquire, produce, manufacture and supply goods, 5
 - (b) acquire land by agreement and manage and deal with land,
 - (c) supply accommodation to any person,
 - (d) supply services to any person and provide new services,
 - (e) provide instruction for any person, and
 - (f) develop and exploit ideas and exploit intellectual property. 10
- (2) But the Information Centre may exercise a power under subsection (1) only –
- (a) if doing so involves, or is connected with, the collection, analysis, publication or other dissemination of information, and
 - (b) to the extent that its exercise does not to any significant extent interfere with the performance by the Centre of its functions. 15
- (3) The Information Centre may –
- (a) charge for anything it does in the exercise of a power under subsection (1), and
 - (b) calculate any such charge on the basis that it considers to be the appropriate commercial basis. 20

251 Arrangements with other bodies

- (1) The Information Centre may arrange with any person or body to provide, or assist in providing, any service which the Centre is required or authorised to provide by virtue of this Chapter.
- (2) The power under this section may be exercised on such terms as may be agreed, including terms as to the making of payments by or to the Information Centre. 25

252 Failure by Information Centre to discharge any of its functions

- (1) The Secretary of State may give a direction to the Information Centre if the Secretary of State considers that the Centre – 30
- (a) is failing or has failed to discharge any of its functions, or
 - (b) is failing or has failed properly to discharge any of its functions.
- (2) A direction under subsection (1) may direct the Information Centre to discharge such of those functions, and in such manner and within such period or periods, as may be specified in the direction. 35
- (3) If the Information Centre fails to comply with a direction under subsection (1), the Secretary of State may –
- (a) discharge the functions to which it relates, or
 - (b) make arrangement for any other person to discharge them on the Secretary of State’s behalf. 40

253 Protection from personal liability

- (1) Section 265 of the Public Health Act 1875 (which relates to the protection of members and officers of certain authorities from personal liability) has effect as if there were included in the authorities referred to in that section a reference to the Information Centre. 5
- (2) In its application to the Information Centre as provided for by subsection (1), section 265 of that Act has effect as if any reference in that section to the Public Health Act 1875 were a reference to this Act.

General and supplementary

254 Powers of Secretary of State and Board to give directions

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- (1) Regulations may make provision conferring powers on the Secretary of State or the Board to give directions –
 - (a) requiring a health or social care body to exercise such of the Information Centre’s functions as may be specified;
 - (b) requiring the Centre or another health or social care body to exercise such information functions of the Secretary of State or (as the case may be) the Board as may be specified; 15
 - (c) requiring the Centre to exercise such functions as may be specified which are similar to information functions of any health or social care body. 20
- (2) A power conferred on the Secretary of State under subsection (1)(a) must provide that a direction may be given in respect of a function of the Information Centre only if the function relates to information which is of a description prescribed in the regulations and –
 - (a) in respect of which the Secretary of State may give a direction under section 238, or 25
 - (b) which the Secretary of State considers is information in respect of which a mandatory request may be made under section 239.
- (3) A power conferred on the Board under subsection (1)(a) must provide that a direction may be given in respect of a function of the Information Centre only if the function relates to information which is of a description prescribed in the regulations and in respect of which the Board may give a direction under section 238. 30
- (4) A power conferred under subsection (1)(a) must provide that a direction must include provision requiring the body in question to provide the Information Centre with the information it needs to comply with the duty under section 244 (duty to publish information register). 35
- (5) In this section –
 - “information function” means a function in relation to the collection, analysis, publication or other dissemination of information; 40
 - “specified” means specified in a direction given under regulations made under subsection (1).

255 Interpretation of this Chapter

In this Chapter –

“adult social care” has the meaning given by section 237;	
“the Board” means the National Health Service Commissioning Board;	
“devolved authority” means –	
(a) the Scottish Ministers;	
(b) the Welsh Ministers; and	5
(c) the Department of Health, Social Services and Public Safety in Northern Ireland;	
“health care” has the meaning given by section 239;	
“health service” has the same meaning as in the National Health Service Act 2006 (see section 275(1) of that Act);	10
“health services” has the meaning given by section 237;	
“health or social care body” has the meaning given by section 242;	
“mandatory request” has the meaning given by section 239;	
“public body” means a body or other person whose functions –	
(a) are of a public nature, or	15
(b) include functions of that nature,	
but in the latter case, the body or person is a public body to the extent only of those functions.	
256 Dissolution of predecessor body	
The Special Health Authority known as the Health and Social Care Information Centre is abolished.	20
257 Consequential provision	
Schedule 18 (which contains consequential provision) has effect.	
 PART 10 	
ABOLITION OF CERTAIN PUBLIC BODIES ETC	
	25
258 The Alcohol Education and Research Council	
(1) The Alcohol Education and Research Council is abolished.	
(2) The Licensing (Alcohol Education and Research) Act 1981 is repealed.	
(3) Part 1 of Schedule 19 (which contains consequential amendments and savings) has effect.	30
259 The Appointments Commission	
(1) The Appointments Commission is abolished.	
(2) Omit Part 5 of the Health Act 2006 (which established the Commission).	
(3) Part 2 of Schedule 19 (which contains consequential amendments and savings) has effect.	35

260 The National Information Governance Board for Health and Social Care

- (1) The National Information Governance Board for Health and Social Care is abolished.
- (2) Omit sections 250A to 250D of the National Health Service Act 2006 (which established the Board). 5
- (3) After section 20 of the Health and Social Care Act 2008 insert –

“20A Functions relating to processing of information by registered persons

- (1) The Commission has the following functions in relation to the processing of relevant information –
 - (a) to monitor the practice followed by registered persons in relation to such processing, and 10
 - (b) to keep the National Health Service Commissioning Board and Monitor informed about the practice being followed by registered persons in relation to such processing.
- (2) The Commission must, in exercising those functions, seek to improve the practice followed by registered persons in relation to the processing of relevant information. 15
- (3) In this section “relevant information” means –
 - (a) patient information,
 - (b) any other information obtained or generated in the course of the provision of the health service continued under section 1 of the National Health Service Act 2006, 20
 - (c) any other information obtained or generated in the course of the exercise by an English local authority of its adult social services functions, and 25
 - (d) any other information obtained or generated in the course of the carrying on by an English local authority of adult placement schemes in connection with which arrangements are made for the provision of personal care.
- (4) In subsection (3) “patient information” means –
 - (a) information (however recorded) which relates to the physical or mental health or condition of an individual (“P”), to the diagnosis of P’s condition or to P’s care or treatment, and
 - (b) information (however recorded) which is to any extent derived, directly or indirectly, from that information, 35whether or not the identity of the individual in question is ascertainable from the information.
- (5) In this section –
 - “adult placement scheme” and “personal care” each have such meaning as they have from time to time in regulations under section 20; 40
 - “processing”, in relation to information, has the same meaning as in the Data Protection Act 1998;
 - “registered person” means a person registered under this Chapter as a manager or service provider in respect of a regulated activity.” 45

- (4) In section 80(3) of that Act (persons Commission must consult before publishing code of practice on confidential personal information), for paragraph (a) substitute –
“(a) the National Health Service Commissioning Board,”.
- (5) In section 252 of the National Health Service Act 2006 (consultation before making regulations on control of patient information), in subsection (1), for “the National Information Governance Board for Health and Social Care” substitute “the Care Quality Commission”; and in consequence of that –
(a) for the title to that section substitute “Consultation with the Care Quality Commission”, and
(b) in section 271(3)(g) of that Act –
(i) for “sections” substitute “section”, and
(ii) omit “252 (consultation with National Information Governance Board)”.
- (6) The Care Quality Commission must exercise its power under paragraph 6(3) of Schedule 1 to the Health and Social Care Act 2008 so as to appoint a committee, to be known as “the National Information Governance Committee”, until 31 March 2015.
- (7) The purpose of the committee is to provide the Care Quality Commission with advice on and assistance with the exercise of its functions relating to the processing of relevant information within the meaning of section 20A of the Health and Social Care Act 2008.
- (8) Part 3 of Schedule 19 (which contains consequential amendments and savings) has effect.
- 261 The National Patient Safety Agency**
- (1) The National Patient Safety Agency is abolished.
- (2) The National Patient Safety Agency (Establishment and Constitution) Order 2001 (S.I. 2001/1743) is revoked.
- (3) In section 13 of the NHS Redress Act 2006 (scheme authority’s duties of co-operation), omit subsection (2).
- 262 The NHS Institute for Innovation and Improvement**
- (1) The NHS Institute for Innovation and Improvement is abolished.
- (2) The NHS Institute for Innovation and Improvement (Establishment and Constitution) Order 2005 (S.I. 2005/1446) is revoked.
- 263 Standing advisory committees**
- (1) Omit section 250 of, and Schedule 19 to, the National Health Service Act 2006 (Secretary of State’s standing advisory committees).
- (2) In consequence of the repeal of Schedule 19 to that Act, in Schedule 3 to the Health Act 2009, omit paragraph 13.
- (3) The repeal of section 250 of the National Health Service Act 2006 does not affect the continuing effect of the National Health Service (Standing Advisory

Committees) Order 1981 (S.I. 1981/597) (establishment of the Joint Committee on Vaccination and Immunisation) made under that section.

PART 11

MISCELLANEOUS

Duties to co-operate 5

264 Monitor: duty to co-operate with Care Quality Commission

- (1) Monitor must co-operate with the Care Quality Commission in the exercise of their respective functions.
- (2) In particular Monitor must –
 - (a) give the Commission any information Monitor has about the provision of health care services which Monitor or the Commission considers would assist the Commission in the exercise of its functions, 10
 - (b) make arrangements with the Commission to ensure that –
 - (i) a person applying both for a licence under Chapter 4 of Part 3 and to be registered under the Health and Social Care Act 2008 may do so by way of a single application form, 15
 - (ii) such a person is granted a licence under that Chapter and registration under that Act by way of a single document, and
 - (c) seek to secure that the conditions included in a licence under that Chapter in a case within paragraph (b) are consistent with any conditions on the person’s registration under that Act. 20
- (3) Without prejudice to subsection (2)(a) Monitor must, on request, provide the Commission with any material relevant to the exercise of Monitor’s functions pursuant to section 61(2), so far as the material relates to the provision of health care services. 25
- (4) In subsection (2), references to registration under the Health and Social Care Act 2008 are references to registration under Chapter 2 of Part 1 of that Act.

265 Care Quality Commission: duty to co-operate with Monitor

- (1) Section 70 of the Health and Social Care Act 2008 (co-operation between the Commission and the Independent Regulator of NHS foundation trusts) is amended as follows. 30
- (2) For subsection (1) substitute –

“(1) The Commission must co-operate with Monitor in the exercise of their respective functions.”
- (3) For subsection (2) substitute – 35

“(2) In particular the Commission must –

 - (a) give Monitor any information the Commission has about the provision of health care which the Commission or Monitor considers would assist Monitor in the exercise of its functions, and 40
 - (b) make arrangements with Monitor to ensure that –

<ul style="list-style-type: none"> <li style="margin-left: 40px;">(i) a person applying to be both registered under Chapter 2 and for a licence under the Health and Social Care Act 2011 may do so by way of a single application form, and <li style="margin-left: 40px;">(ii) such a person is granted a registration under Chapter 2 and a licence under that Act by way of a single document, and <li style="margin-left: 40px;">(c) seek to secure that the conditions on a registration under Chapter 2 in a case within paragraph (b) are consistent with the conditions included in the person’s licence under that Act.” 	5
<ul style="list-style-type: none"> (4) In subsection (3) – <ul style="list-style-type: none"> (a) for “Independent Regulator” substitute “Monitor”, and (b) for “an NHS foundation trust” substitute “a person who holds a licence under the Health and Social Care Act 2011”. 	10
<ul style="list-style-type: none"> (5) After that subsection insert – <ul style="list-style-type: none"> “(4) In this section, a reference to a licence under the Health and Social Care Act 2011 is a reference to a licence under Chapter 4 of Part 3 of that Act.” 	15
<ul style="list-style-type: none"> (6) In the heading of that section, for “Independent Regulator of NHS Foundation Trusts” substitute “Monitor”. 	
266 Other duties to co-operate	
<ul style="list-style-type: none"> (1) Monitor and each relevant body must co-operate with each other in the exercise of their respective functions. 	20
<ul style="list-style-type: none"> (2) The Care Quality Commission and each relevant body must co-operate with each other in the exercise of their respective functions. 	
<ul style="list-style-type: none"> (3) The relevant bodies are – <ul style="list-style-type: none"> (a) the National Health Service Commissioning Board, (b) the National Institute for Health and Care Excellence, (c) the Health and Social Care Information Centre, and (d) Special Health Authorities which have functions that are exercisable in relation to England. 	25
<ul style="list-style-type: none"> (4) The Secretary of State may by order amend subsection (3) so as to add to the list of relevant bodies a body that has functions relating to health. 	30
<ul style="list-style-type: none"> (5) Where Monitor or the Care Quality Commission regulates an activity of a relevant body, the duty imposed by subsection (1) or (as the case may be) subsection (2) does not apply to – <ul style="list-style-type: none"> (a) the exercise by Monitor or by the Commission of its function of regulating that activity; (b) the exercise by the relevant body of any function in so far as it involves carrying on that activity. 	35
<ul style="list-style-type: none"> (6) A reference in this section to regulating an activity includes a reference to – <ul style="list-style-type: none"> (a) authorising the carrying on of the activity, imposing restrictions on the carrying on of the activity, and exercising functions in relation to such authorisations or restrictions; (b) enforcing the performance of an obligation imposed (whether or not by provision made by or under an enactment) with respect to the carrying on of the activity; 	40 45

- (c) issuing guidance on the carrying on of the activity, the authorisation of the activity, restrictions on the activity, or the performance of obligation imposed with respect to the carrying on of the activity.
 - (7) For the purposes of this section and section 266, the functions of a Special Health Authority include such functions as it is directed to exercise under section 7 of the National Health Service Act 2006 (directions by Secretary of State). 5
 - (8) References in this section and section 266 to functions are references to functions so far as exercisable in relation to England.
- 267 Breaches of duties to co-operate** 10
- (1) If the Secretary of State is of the opinion that bodies subject to a relevant co-operation duty have breached or are breaching the duty, or are at significant risk of breaching the duty, the Secretary of State may give a written notice of the Secretary of State’s opinion to each body.
 - (2) The relevant co-operation duties are— 15
 - (a) the duty under section 264 (co-operation by Monitor with the Care Quality Commission),
 - (b) the duties under section 266(1) and (2),
 - (c) the duty under section 70 of the Health and Social Care Act 2008 (co-operation by the Care Quality Commission with Monitor), 20
 - (d) any duties imposed by an enactment on relevant bodies to co-operate with each other in the exercise of their respective functions.
 - (3) The Secretary of State must publish each notice given under subsection (1) in such form as the Secretary of State considers appropriate.
 - (4) Subsection (5) applies if, having given a notice under subsection (1), the Secretary of State is satisfied that— 25
 - (a) the bodies concerned have breached or are continuing to breach the duty or, the risk of a breach having materialised, are breaching the duty, and
 - (b) the breach is having a detrimental effect on the performance of the health service (or, where the effect of the breach on the performance of the health service is both beneficial and detrimental, its overall effect is detrimental). 30
 - (5) The Secretary of State may by order prohibit each body from exercising specified functions, or from exercising specified functions in a specified manner, unless the other body concerned agrees in writing that the body may do so. 35
 - (6) The power to make an order under subsection (5)—
 - (a) may be exercised so as to specify different functions in relation to each body, but 40
 - (b) may not be exercised so as to prevent a body from complying with a requirement imposed by or under an enactment or by a court or tribunal.
 - (7) In default of agreement as to the exercise of a function specified in an order under subsection (5), a body may exercise the function in accordance with provision determined by arbitration. 45

- (8) An order under subsection (5) must specify the period for which a prohibition imposed by it has effect; and the period specified for that purpose may not exceed one year beginning with the day on which the order comes into force.
- (9) But if the Secretary of State is satisfied that the breach is continuing to have a detrimental effect (or an effect that overall is detrimental) on the performance of the health service, the Secretary of State may by order extend by one year the period for which the prohibition for the time being has effect. 5
- (10) In this section, “the health service” means the comprehensive health service continued under section 1(1) of the National Health Service Act 2006.
- The Care Quality Commission* 10
- 268 Requirement for Secretary of State to approve remuneration policy etc**
- In paragraph 5 of Schedule 1 to the Health and Social Care Act 2008 (employees of the Care Quality Commission), at the end insert—
- “(5) Before making a determination as to remuneration, pensions, allowances or gratuities for the purposes of sub-paragraph (3) or (4), the Commission must obtain the approval of the Secretary of State to its policy on that matter.” 15
- Arrangements with devolved authorities etc.*
- 269 Arrangements between the Board and Northern Ireland Ministers**
- (1) The National Health Service Commissioning Board may make arrangements with a Northern Ireland Minister for the Board to commission services for the purposes of the Northern Ireland health service. 20
- (2) Arrangements under this section may be on such terms and conditions as may be agreed between the parties to the arrangements.
- (3) Those terms and conditions may include provision with respect to the making of payments to the National Health Service Commissioning Board in respect of the cost to it of giving effect to the arrangements. 25
- (4) In this section—
“commission” means arrange for the provision of, and
“Northern Ireland Minister” includes the First Minister, the deputy First Minister and a Northern Ireland department. 30
- 270 Arrangements between the Board and Scottish Ministers etc.**
- (1) The National Health Service Commissioning Board may make arrangements with the Scottish Ministers or a Scottish health body for the Board to commission services for the purposes of the Scottish health service. 35
- (2) Arrangements under this section may be on such terms and conditions as may be agreed between the parties to the arrangements.
- (3) Those terms and conditions may include provision with respect to the making of payments to the National Health Service Commissioning Board in respect of the cost to it of giving effect to the arrangements. 40

- (4) In this section –
“commission” means arrange for the provision of, and
“Scottish health body” means –
- (a) a Health Board or Special Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978, and 5
 - (b) the Common Services Agency for the Scottish Health Service constituted by section 10 of that Act.

271 Relationships between the health services

Schedule 20 (which amends enactments relating to the relationships between the health services in the United Kingdom) has effect. 10

272 Advice or assistance to public authorities in the Isle of Man or Channel Islands

- (1) The National Health Service Commissioning Board or a commissioning consortium may provide advice or assistance to any public authority in the Isle of Man or Channel Islands. 15
- (2) Advice or assistance under subsection (1) may be provided on such terms, including terms as to payment, as the Board or (as the case may be) the consortium considers appropriate.

Supervised community treatment

273 Certificate of consent of community patients to treatment 20

- (1) Part 4A of the Mental Health Act 1983 (treatment of community patients not recalled to hospital) is amended as follows.
- (2) In section 64C (treatment of adult community patients), after subsection (4) insert –
 - “(4A) Where there is authority to give treatment by virtue of subsection (2)(a), the certificate requirement is also met in respect of the treatment if the approved clinician in charge of the treatment has certified in writing that the patient has capacity to consent to the treatment and has consented to it. 25
 - (4B) But, if the patient has not attained the age of 18, subsection (4A) does not apply to section 58A type treatment.” 30
- (3) In section 64E (treatment of child community patients), in subsection (7) –
 - (a) for “(3) to (9)” substitute “(3) to (4A) and (5) to (9)”, and
 - (b) at the end insert “; and for the purpose of this subsection, subsection (4A) of section 64C above has effect as if – 35
 - (a) the references to treatment were references only to section 58 type treatment,
 - (b) the reference to subsection (2)(a) of section 64C were a reference to subsection (6)(a) of this section, and
 - (c) the reference to capacity to consent were a reference to competence to consent.” 40

- (4) After section 64F insert –
- “64FA Withdrawal of consent**
- (1) Where the consent of a patient to any treatment has been given as mentioned in section 64C(2)(a) above for the purposes of section 64B or 64E above, the patient may at any time before the completion of the treatment withdraw his consent, and those sections shall then apply as if the remainder of the treatment were a separate form of treatment. 5
- (2) Subsection (3) below applies where –
- (a) the consent of a patient to any treatment has been given as mentioned in section 64C(2)(a) above for the purposes of section 64B or 64E above; but 10
- (b) before the completion of the treatment, the patient loses capacity or (as the case may be) competence to consent to the treatment.
- (3) The patient shall be treated as having withdrawn his consent and section 64B or (as the case may be) section 64E above shall then apply as if the remainder of the treatment were a separate form of treatment. 15
- (4) Without prejudice to the application of subsections (1) to (3) above to any treatment given under the plan of treatment to which a patient has consented, a patient who has consented to such a plan may at any time withdraw his consent to further treatment, or to further treatment of any description, under the plan. 20
- (5) This section shall not preclude the continuation of any treatment, or of treatment under any plan, pending compliance with section 58, 58A, 64B or 64E above if the approved clinician in charge of the treatment considers that the discontinuance of the treatment, or of treatment under the plan, would cause serious suffering to the patient.” 25
- (5) In section 64H (certificates: supplementary provision) –
- (a) in subsection (2), at the end insert “; and the regulations may make different provision for the different descriptions of Part 4A certificate”, and 30
- (b) in subsections (3), (4) and (5), after “Part 4A certificate” insert “that falls within section 64C(4) above”.
- (6) In section 17B of the Mental Health Act 1983 (conditions of community treatment order), in subsection (3)(b), after “Part 4A of this Act” insert “that falls within section 64C(4) below”. 35
- (7) In section 61 of that Act (review of treatment), in subsection (1), after “that section)” insert “that falls within section 64C(4) below”.
- (8) In section 62A of that Act (treatment on recall of community patient or revocation of order), in subsection (5), after “applies” insert “and the Part 4A certificate falls within section 64C(4) below”. 40
- (9) In subsection (6) of that section, after “58 or 58A above” insert “or 64B or 64E below”.
- (10) After that subsection insert –
- “(6A) In a case where this section applies and the certificate requirement is no longer met for the purposes of section 64C(4A) below, the continuation 45

of any treatment, or of treatment under any plan, pending compliance with section 58 or 58A above or 64B or 64E below shall not be precluded if the approved clinician in charge of the treatment considers that the discontinuance of the treatment, or of treatment under the plan, would cause serious suffering to the patient.”

5

Transfer schemes

274 Transfer schemes

- (1) The Secretary of State may make a property transfer scheme or a staff transfer scheme in connection with –
 - (a) the establishment or abolition of a body by this Act, or
 - (b) the modification of the functions of a body by or under this Act.
- (2) A property transfer scheme is a scheme for the transfer from a body mentioned in the first column of the Table in Schedule 21 of any property, rights or liabilities, other than rights or liabilities under or in connection with a contract of employment, to a body mentioned in the corresponding entry in the second column.
- (3) A staff transfer scheme is a scheme for the transfer from a body mentioned in the first column of the Table in Schedule 22 of any rights or liabilities under or in connection with a contract of employment to a body mentioned in the corresponding entry in the second column.
- (4) The Secretary of State may direct the Board or a qualifying company to exercise the functions of the Secretary of State in relation to the making of a property transfer scheme or a staff transfer scheme in connection with the abolition of –
 - (a) one or more Primary Care Trusts specified in the direction, or
 - (b) one or more Strategic Health Authorities so specified.
- (5) Where the Secretary of State gives a direction under subsection (4), the Secretary of State may give directions to the Board or (as the case may be) the company about its exercise of the functions.
- (6) For the purposes of this section and section 275 –
 - (a) an individual who holds employment in the civil service is to be treated as employed by virtue of a contract of employment, and
 - (b) the terms of the individual’s employment in the civil service are to be regarded as constituting the terms of the contract of employment.
- (7) In this section and section 275 references to the transfer of property include references to the grant of a lease.
- (8) In this section and Schedules 21 and 22, “qualifying company” means a company which is formed under section 223 of the National Health Service Act 2006 and wholly or partly owned by the Secretary of State.
- (9) In section 275 and Schedules 21 and 22, “local authority” means –
 - (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 Council of the Isles of Scilly;

- (e) the Common Council of the City of London.

275 Transfer schemes: supplemental

- (1) The things that may be transferred under a property transfer scheme or a staff transfer scheme include –
- (a) property, rights and liabilities that could not otherwise be transferred; 5
 - (b) property acquired, and rights and liabilities arising, after the making of the scheme;
 - (c) criminal liabilities but only where the transfer is to a person mentioned in subsection (2).
- (2) Those persons are – 10
- (a) the National Health Service Commissioning Board;
 - (b) a commissioning consortium;
 - (c) a local authority;
 - (d) the Care Quality Commission;
 - (e) Monitor; 15
 - (f) the National Institute for Health and Care Excellence;
 - (g) the Health and Social Care Information Centre;
 - (h) the Health and Care Professions Council;
 - (i) a public authority other than a Minister of the Crown.
- (3) A property transfer scheme or a staff transfer scheme may make supplementary, incidental, transitional and consequential provision and may in particular – 20
- (a) create rights, or impose liabilities, in relation to property or rights transferred;
 - (b) make provision about the continuing effect of things done by the transferor in respect of anything transferred; 25
 - (c) make provision about the continuation of things (including legal proceedings) in the process of being done by, on behalf of or in relation to the transferor in respect of anything transferred;
 - (d) make provision for references to the transferor in an instrument or other document in respect of anything transferred to be treated as references to the transferee. 30
- (4) A property transfer scheme may make provision for the shared ownership or use of property.
- (5) A staff transfer scheme may make provision which is the same or similar to the TUPE regulations. 35
- (6) A property transfer scheme or a staff transfer scheme may provide –
- (a) for the scheme to be modified by agreement after it comes into effect, and
 - (b) for any such modifications to have effect from the date when the original scheme comes into effect. 40
- (7) Where a Primary Care Trust, a Strategic Health Authority or a Special Health Authority is abolished by this Act, the Secretary of State must exercise the powers conferred by section 274 and this section so as to secure that all the body's liabilities (other than criminal liabilities) are dealt with. 45

- (8) In this section, “TUPE regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).

PART 12

FINAL PROVISIONS

- 276 Power to make consequential provision** 5
- (1) The Secretary of State may by order make provision in consequence of this Act.
- (2) An order under this section may, in particular –
- (a) amend or repeal a provision of an Act;
 - (b) amend or revoke a provision of subordinate legislation;
 - (c) include transitional, transitory or saving provision in connection with the commencement of provision made by the order. 10
- (3) An order under this section that makes provision in consequence of Part 1, Part 4, Part 5 or Part 7 may (in addition to the things that may be done in reliance on subsection (2)) amend a provision of, or a provision of an instrument made under – 15
- (a) an Act of the Scottish Parliament,
 - (b) an Act or Measure of the National Assembly for Wales, or
 - (c) Northern Ireland legislation.
- (4) Transitory provision by virtue of subsection (2)(c) may, in particular, modify the application of provision made by the order pending the commencement of – 20
- (a) another provision of the order,
 - (b) a provision of this Act,
 - (c) a provision of another Act,
 - (d) a provision of an Act or Measure of the National Assembly for Wales, or 25
 - (e) a provision of subordinate legislation.
- (5) The power conferred by this section is not restricted by any other provision of this Act.
- (6) In this section, “subordinate legislation” has the same meaning as in the Interpretation Act 1978. 30
- 277 Regulations, orders and directions**
- (1) A power to make regulations under this Act is exercisable by the Secretary of State.
- (2) Regulations under this Act, and orders by the Secretary of State or the Privy Council under this Act, must be made by statutory instrument. 35
- (3) Subject to subsections (4) to (6), a statutory instrument containing regulations under this Act, or an order by the Secretary of State or the Privy Council under this Act, is subject to annulment in pursuance of a resolution of either House of Parliament. 40
- (4) Subsection (3) does not apply to an order under section 279 (commencement).

- (5) A statutory instrument which contains (whether alone or with other provision) any of the following may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament –
- (a) regulations under section 53 (extension of Monitor’s functions to adult social care services); 5
 - (b) regulations under section 91(7)(b) or (c) (percentage to be prescribed in cases of objections to proposals to modify standard licence conditions);
 - (c) regulations under section 95(4) (manner in which turnover to be calculated for purposes of penalty for breach of licence conditions etc.);
 - (d) regulations under section 96(3)(d) (descriptions of action for specifying in enforcement undertaking for breach of licence conditions etc.); 10
 - (e) an order under section 101(10) (variation of period of designation for failing NHS foundation trust);
 - (f) regulations under section 106(2)(a), (b) or (c) (percentage to be prescribed in cases of objections to proposals for national tariff); 15
 - (g) regulations under section 116 (health special administration regulations);
 - (h) an order under section 126 (maximum amount that may be raised from levy to raise funds for health special administration cases);
 - (i) regulations under section 128(2)(b) (percentage to be prescribed in cases of objections to proposals to impose levy); 20
 - (j) an order under section 164(4) (variation of date on which NHS trusts abolished);
 - (k) an order under section 266(4) (addition to list of bodies subject to duty co-operate); 25
 - (l) an order under section 267(5) (order prohibiting bodies subject to duty to co-operate from exercising specified functions etc.);
 - (m) an order under section 276 which makes provision by virtue of subsection (2)(a) of that section (consequential amendments of Acts);
 - (n) regulations which, by virtue of subsection (8)(a), include provision that amends or repeals a provision of an Act of Parliament. 30
- (6) A statutory instrument containing an order by the Privy Council under this Act that includes provision which would, if it were included in an Act of the Scottish Parliament, be within the legislative competence of that Parliament is subject to annulment in pursuance of a resolution of – 35
- (a) either House of Parliament, or
 - (b) the Scottish Parliament.
- (7) A power to make regulations under this Act, a power of the Secretary of State or the Privy Council to make an order under this Act, and a power to give directions under or by virtue of this Act – 40
- (a) may be exercised either in relation to all cases to which the power extends, or in relation to those cases subject to specified exceptions, or in relation to any specified cases or descriptions of case,
 - (b) may be exercised so as to make, as respects the cases in relation to which it is exercised – 45
 - (i) the full provision to which the power extends or any less provision (whether by way of exception or otherwise),
 - (ii) the same provision for all cases in relation to which the power is exercised, or different provision for different cases or different descriptions of case, or different provision as respects 50

- the same case or description of case for different purposes of this Act,
- (iii) any such provision either unconditionally or subject to any specified condition, and
- (c) may, in particular, make different provision for different areas. 5
- (8) Any such power includes –
- (a) power to make incidental, supplementary, consequential, saving or transitional provision (including, in the case of a power to make regulations, provision amending, repealing or revoking enactments), and 10
- (b) power to provide for a person to exercise a discretion in dealing with any matter.
- (9) A power to give directions under or by virtue of this Act includes power to vary or revoke the directions by subsequent directions.
- (10) A direction under or by virtue of this Act by a Minister of the Crown (acting alone) must be given by regulations or an instrument in writing. 15
- (11) A direction under or by virtue of this Act by any other person (or persons) must be given by an instrument in writing.
- 278 Financial provision**
- There is to be paid out of money provided by Parliament – 20*
- (a) *any expenditure incurred by virtue of this Act by the Secretary of State, and*
- (b) *any increase attributable to this Act in the sums payable under any other Act out of money so provided.*
- 279 Commencement**
- (1) The following provisions come into force on the day on which this Act is passed – 25
- (a) section 203 (Health and Care Professions Council: power to make arrangements with other health or social care regulators);
- (b) section 205(3) (power of Secretary of State to make arrangements with Health and Care Professions Council to discharge General Social Care Council’s functions during period preceding abolition); 30
- (c) the provisions of this Part;
- (d) any other provision of this Act so far as it (or an amendment made by it) confers power to make an order or regulations.
- (2) Sections 164 and 165 (abolition of NHS trusts in England etc.) come into force in accordance with section 164. 35
- (3) The other provisions of this Act come into force on such day as the Secretary of State may by order appoint.
- (4) Different days may be appointed under subsection (3) for different purposes (including different areas). 40
- (5) An order under subsection (3) may include transitory provision; and such provision may, in particular, modify the application of a provision of this Act pending the commencement of –
- (a) another provision of this Act,

-
- (b) a provision of another Act,
 - (c) a provision of an Act or Measure of the National Assembly for Wales, or
 - (d) a provision of subordinate legislation (within the meaning of the Interpretation Act 1978). 5
- (6) Where a provision of this Act (or an amendment made by it) requires consultation to take place, consultation undertaken before the commencement of the provision is as effective for the purposes of that provision as consultation undertaken after that commencement.
- 280 Extent** 10
- (1) Subject to subsections (2) to (5), 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 provisions extend to England and Wales, Scotland and Northern Ireland – 15
 - (a) sections 47, 48 and 50 (public health functions);
 - (b) sections 114 to 119 (health special administration);
 - (c) section 198(1) (the Health and Care Professions Council);
 - (d) section 206(1) (the Professional Standards Authority for Health and Social Care); 20
 - (e) section 214(2) to (4) and (6) (Part 7: consequential provision etc.);
 - (f) section 215(1), (3) and (4) and Part 4 of Schedule 14 (abolition of the Office of the Health Professions Adjudicator);
 - (g) this Part.
 - (4) Section 269 (arrangements between the Board and Northern Ireland Ministers) extends to England and Wales and Northern Ireland. 25
 - (5) Section 270 (arrangements between the Board and Scottish Ministers) extends to England and Wales and Scotland.
 - (6) The Secretary of State may by order provide that specified provisions of this Act, in their application to the Isles of Scilly, have effect with such modifications as may be specified. 30

281 Short title

This Act may be cited as the Health and Social Care Act 2011.

SCHEDULES

SCHEDULE 1

Section 5(2)

THE NATIONAL HEALTH SERVICE COMMISSIONING BOARD

“SCHEDULE A1

THE NATIONAL HEALTH SERVICE COMMISSIONING BOARD 5

Status

- 1 (1) The Board is not to be regarded as a servant or agent of the Crown, or as enjoying any status, privilege or immunity of the Crown.
- (2) The Board’s property is not to be regarded as property of, or property held on behalf of, the Crown. 10

Membership

- 2 (1) The Board is to consist of –
 - (a) a chair appointed by the Secretary of State,
 - (b) at least five other members so appointed, and
 - (c) the chief executive and other members appointed in accordance with paragraph 3. 15
- (2) In this Schedule –
 - (a) references to non-executive members of the Board are references to the members appointed in accordance with sub-paragraph (1)(a) and (b), and 20
 - (b) references to executive members of the Board are references to the other members.
- (3) The number of executive members must be less than the number of non-executive members.

The chief executive and other executive members: appointment and status 25

- 3 (1) The chief executive and the other executive members of the Board are to be appointed by the non-executive members.
- (2) A person may not be appointed as chief executive without the consent of the Secretary of State.
- (3) The chief executive and the other executive members are to be employees of the Board. 30
- (4) The first chief executive of the Board is to be appointed by the Secretary of State.

Non-executive members: tenure

- 4 (1) A person holds and vacates office as a non-executive member of the Board in accordance with that person's terms of appointment.
- (2) A person may at any time resign from office as a non-executive member by giving notice to the Secretary of State. 5
- (3) The Secretary of State may at any time remove a person from office as a non-executive member on any of the following grounds –
- (a) incapacity,
 - (b) misbehaviour, or
 - (c) failure to carry out his or her duties as a non-executive member. 10
- (4) The Secretary of State may suspend a person from office as a non-executive member if it appears to the Secretary of State that there are or may be grounds to remove that person from office under sub-paragraph (3). 15
- (5) A person may not be appointed as a non-executive member for a period of more than four years.
- (6) A person who ceases to be a non-executive member is eligible for re-appointment.

Suspension of non-executive members 20

- 5 (1) This paragraph applies where a person is suspended under paragraph 4(4).
- (2) The Secretary of State must give notice of the decision to the person; and the suspension takes effect on receipt by the person of the notice. 25
- (3) The notice may be –
- (a) delivered in person (in which case the person is taken to receive 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 taken to receive it on the third day after the day on which it is posted). 30
- (4) The initial period of suspension must not exceed six months.
- (5) The Secretary of State may at any time review the suspension.
- (6) The Secretary of State –
- (a) must review the suspension if requested in writing by the person to do so, but
 - (b) need not review the suspension less than three months after the beginning of the initial period of suspension. 35
- (7) Following a review during a period of suspension, the Secretary of State may – 40
- (a) revoke the suspension, or
 - (b) suspend the person for another period of not more than six months from the expiry of the current period.

-
- (8) The Secretary of State must revoke the suspension if the Secretary of State –
- (a) decides that there are no grounds to remove the person from office under paragraph 4(3), or
 - (b) decides that there are grounds to do so but does not remove the person from office under that provision. 5
- 6 (1) Where a person is suspended from office as the chair under paragraph 4(4), the Secretary of State may appoint a non-executive member as interim chair to exercise the chair’s functions.
- (2) Appointment as interim chair is for a term not exceeding the shorter of – 10
- (a) the period ending with either –
 - (i) the appointment of a new chair, or
 - (ii) the revocation or expiry of the existing chair’s suspension, and 15
 - (b) the remainder of the interim chair’s term as a non-executive member.
- (3) A person who ceases to be the interim chair is eligible for re-appointment.
- Payment of non-executive members* 20
- 7 (1) The Board must pay to its non-executive members such remuneration as the Secretary of State may determine.
- (2) The Board must pay or make provision for the payment of such pensions, allowances or gratuities as the Secretary of State may determine to or in respect of any person who is or has been a non-executive member of the Board. 25
- (3) If a person ceases to be a non-executive member and the Secretary of State decides that there are exceptional circumstances which mean that the person should be compensated, the Board must pay compensation to the person of such amount as the Secretary of State may, with the approval of the Treasury, determine. 30
- Staff*
- 8 The Board may appoint such persons to be employees of the Board as it considers appropriate.
- 9 (1) Employees of the Board are to be paid such remuneration and allowances as the Board may determine. 35
- (2) Employees of the Board are to be appointed on such other terms and conditions as the Board may determine.
- (3) The Board may pay or make provision for the payment of such pensions, allowances or gratuities as it may determine to or in respect of any person who is or has been an employee of the Board. 40
- (4) Before making a determination as to remuneration, pensions, allowances or gratuities for the purposes of this paragraph, the

Board must obtain the approval of the Secretary of State to its policy on the matter.

Committees

- 10 (1) The Board may appoint such committees and sub-committees as it considers appropriate. 5
- (2) A committee or sub-committee may consist of or include persons who are not members or employees of the Board.
- (3) The Board may pay such remuneration and allowances as it determines to any person who— 10
- (a) is a member of a committee or a sub-committee, but
 - (b) is not an employee of the Board,
- whether or not that person is a non-executive member of the Board.

Trust funds and trustees

- 11 (1) The Secretary of State may by order provide for the appointment of trustees for the Board to hold property on trust— 15
- (a) for the general or any specific purposes of the Board, or
 - (b) for any purposes relating to the health service in England.
- (2) An order under sub-paragraph (1) may— 20
- (a) make provision as to the persons by whom trustees must be appointed and generally as to the method of their appointment, 25
 - (b) make any appointment subject to such conditions as may be specified in the order (including conditions requiring the consent of the Secretary of State), 25
 - (c) make provision as to the number of trustees to be appointed, including provision under which that number may from time to time be determined by the Secretary of State after consultation with such persons as the Secretary of State considers appropriate, and 30
 - (d) make provision with respect to the term of office of any trustee and his or her removal from office. 30
- (3) Where trustees have been appointed by virtue of sub-paragraph (1), the Secretary of State may by order provide for the transfer of any trust property from the Board to the trustees. 35

Procedure

- 12 (1) The Board may regulate its own procedure.
- (2) The validity of any act of the Board is not affected by any vacancy among the members or by any defect in the appointment of any member. 40

Exercise of functions

- 13 The Board may arrange for the exercise of any of its functions on its behalf by –
- (a) any non-executive member,
 - (b) any employee (including any executive member), or
 - (c) a committee or sub-committee.
- 5

Provision of information to Secretary of State

- 14 (1) The Secretary of State may require the Board to provide the Secretary of State with such information as the Secretary of State considers it necessary to have for the purposes of the functions of the Secretary of State in relation to the health service.
- 10
- (2) The information must be provided in such form, and at such time or within such period, as the Secretary of State may require.

Accounts

- 15 (1) The Board must keep proper accounts and proper records in relation to the accounts.
- 15
- (2) The Secretary of State may, with the approval of the Treasury, give directions to the Board as to –
- (a) the content and form of its accounts, and
 - (b) the methods and principles to be applied in the preparation of its accounts.
- 20
- (3) In sub-paragraph (2) the reference to accounts includes a reference to the Board’s consolidated annual accounts prepared under paragraph 16 and any interim accounts prepared by virtue of paragraph 17.
- 25
- (4) The chief executive of the Board is to be its accounting officer.

Annual accounts

- 16 (1) The Board must prepare consolidated annual accounts in respect of each financial year.
- (2) The consolidated annual accounts must contain –
- (a) the Board’s annual accounts, and
 - (b) a consolidation of the Board’s annual accounts and the annual accounts of each commissioning consortium.
- 30
- (3) The Board must send copies of the consolidated annual accounts to –
- (a) the Secretary of State, and
 - (b) the Comptroller and Auditor General,
- within such period after the end of the financial year to which the accounts relate as the Secretary of State may direct.
- 35
- (4) The Comptroller and Auditor General must –
- (a) examine, certify and report on the consolidated annual accounts, and
- 40

- (b) lay copies of the accounts and the report on them before Parliament.
- (5) In this paragraph, “financial year” includes the period which begins with the day on which the Board is established, and ends on the following 31 March. 5

Interim Accounts

- 17 (1) The Secretary of State may, with the approval of the Treasury, direct the Board to prepare accounts in respect of such period or periods as may be specified in the direction (“interim accounts”).
- (2) The interim accounts in respect of any period must contain – 10
- (a) the Board’s accounts in respect of that period, and
- (b) a consolidation of the Board’s accounts in respect of that period and any accounts of commissioning consortia in respect of that period which are prepared by virtue of paragraph 12(3) of Schedule 1A. 15
- (3) The Board must send copies of any interim accounts to –
- (a) the Secretary of State, and
- (b) if the Secretary of State directs, the Comptroller and Auditor General,
- within such period as the Secretary of State may direct. 20
- (4) The Comptroller and Auditor General must –
- (a) examine, certify and report on any interim accounts sent by virtue of sub-paragraph (3)(b),
- (b) if the Secretary of State so directs, send a copy of the report on the accounts to the Secretary of State, and 25
- (c) if the Secretary of State so directs, lay copies of the accounts and the report on them before Parliament.

Seal and evidence

- 18 (1) The application of the Board’s seal must be authenticated by the signature of any member of the Board or any other person who has been authorised (generally or specially) for that purpose. 30
- (2) A document purporting to be duly executed under the Board’s seal or to be signed on its behalf must be received in evidence and, unless the contrary is proved, taken to be so executed or signed.”

SCHEDULE 2

21(2)

COMMISSIONING CONSORTIA

“SCHEDULE 1A

COMMISSIONING CONSORTIA

PART 1

5

CONSTITUTION OF COMMISSIONING CONSORTIA

- 1 A commissioning consortium must have a constitution.
- 2 The constitution must specify –
 - (a) the name of the consortium,
 - (b) the members of the consortium, and
 - (c) the area of the consortium.
- 3 (1) The constitution must specify the arrangements made by the commissioning consortium for the discharge of its functions (including its functions in determining the remuneration and the other terms and conditions of its employees).
 - (2) The arrangements may include provision for –
 - (a) the appointment of committees or sub-committees of the commissioning consortium, and
 - (b) for any such committees to consist of or include persons other than members or employees of the commissioning consortium.
 - (3) The arrangements may include provision for any functions of the commissioning consortium to be exercised on its behalf by –
 - (a) any of its members or employees, or
 - (b) a committee or sub-committee of the consortium.
- 4 (1) The constitution must specify the procedure to be followed by the commissioning consortium in making decisions.
 - (2) The constitution must, in particular, make provision for dealing with conflicts of interests of members or employees of the commissioning consortium.
- 5 The provision made by paragraphs 3 and 4 must secure that there is effective participation by each member of the commissioning consortium in the exercise of the consortium’s functions.
- 6 In addition to the provision authorised or required to be included under this Part of this Schedule, the constitution may make further provision.

PART 2

35

FURTHER PROVISION ABOUT COMMISSIONING CONSORTIA

Status

- 7 (1) A commissioning consortium is a body corporate.

-
- (2) A commissioning consortium is not to be regarded as a servant or agent of the Crown or as enjoying any status, privilege or immunity of the Crown.
- (3) The property of a commissioning consortium is not to be regarded as property of, or property held on behalf of, the Crown.
- Staff* 5
- 8 (1) A commissioning consortium may appoint such persons to be employees of the consortium as it considers appropriate.
- (2) A commissioning consortium must –
- (a) pay its employees such remuneration as it may determine, and
 - (b) employ them on such other terms and conditions as it may determine. 10
- (3) Regulations may make provision requiring a commissioning consortium to publish, in accordance with the regulations, prescribed information relating to the remuneration determined by it under sub-paragraph (2)(a).
- (4) The Board may publish guidance for commissioning consortia on the determination of remuneration under sub-paragraph (2)(a). 15
- (5) A commissioning consortium may, for or in respect of such of its employees as it may determine, make arrangements for providing pensions, allowances or gratuities.
- (6) Such arrangements may include the establishment and administration, by the consortium or otherwise, of one or more pension schemes. 20
- (7) The arrangements that may be made under sub-paragraph (5) include arrangements for the provision of pensions, allowances or gratuities by way of compensation to or in respect of any of the consortium’s employees who suffer loss of office or employment or loss or diminution of emoluments. 25
- Accountable officer*
- 9 (1) A commissioning consortium must have an accountable officer.
- (2) The accountable officer is to be appointed by the Board.
- (3) The Board may appoint a person to be the accountable officer for more than one consortium (and in the following provisions of this paragraph such an appointment is referred to as a “joint appointment”). 30
- (4) The accountable officer may be –
- (a) an individual who is a member of the consortium or of any body that is a member of the consortium or, in the case of a joint appointment, an individual who is a member of any of the consortia in question or of any body that is a member of any of those consortia, or
 - (b) an employee of the consortium or of any member of the consortium or, in the case of a joint appointment, an employee of any of the consortia in question or of any member of those consortia. 35
- (5) If the accountable officer is not an employee of the consortium or, in the case of a joint appointment, of any of the consortia in question, the consortium or any of the consortia may pay such remuneration to the accountable officer as it may determine. 40

- (6) The accountable officer is responsible for ensuring that the consortium or, in the case of a joint appointment, each of the consortia in question –
- (a) complies with its obligations under –
 - (i) sections 14K and 14L, 5
 - (ii) sections 223I to 223K,
 - (iii) paragraphs 12 and 13 of this Schedule, and
 - (iv) any other provision of this Act specified in a document published by the Board for the purposes of this sub-paragraph, and
 - (b) exercises its functions in a way which provides good value for money. 10

Trust funds and trustees

- 10 (1) The Secretary of State may by order provide for the appointment of trustees for a commissioning consortium to hold property on trust –
- (a) for the general or any specific purposes of the consortium, or 15
 - (b) for any purposes relating to the health service in England.
- (2) An order under sub-paragraph (1) may –
- (a) make provision as to the persons by whom trustees must be appointed and generally as to the method of their appointment,
 - (b) make any appointment subject to such conditions as may be specified in the order (including conditions requiring the consent of the Secretary of State), 20
 - (c) make provision as to the number of trustees to be appointed, including provision under which that number may from time to time be determined by the Secretary of State after consultation with such persons as the Secretary of State considers appropriate, and 25
 - (d) make provision with respect to the term of office of any trustee and his or her removal from office.
- (3) Where trustees have been appointed by virtue of sub-paragraph (1), the Secretary of State may by order provide for the transfer of any trust property from the consortium to the trustees. 30

Externally financed development agreements

- 11 (1) The powers of a consortium include power to enter into externally financed development agreements.
- (2) For the purposes of this paragraph, an agreement is an externally financed agreement if it is certified as such in writing by the Secretary of State. 35
- (3) The Secretary of State may give a certificate under this paragraph if –
- (a) in the Secretary of State’s opinion the purpose or main purpose of the agreement is the provision of services or facilities in connection with the discharge by a consortium of any of its functions, and 40
 - (b) a person proposes to make a loan to, or provide any other form of finance for, another party in connection with the agreement.
- (4) If a consortium enters into an externally financed development agreement it may also, in connection with that agreement, enter into an agreement with a

person who falls within sub-paragraph (3)(b) in relation to the externally financed development agreement.

- (5) In sub-paragraph (3)(b) “another party” means any party to the agreement other than the consortium.
- (6) The fact that an agreement made by a consortium has not been certified under this paragraph does not affect its validity. 5

Accounts and audits

- 12 (1) A commissioning consortium must keep proper accounts and proper records in relation to the accounts.
- (2) A commissioning consortium must prepare annual accounts in respect of each financial year. 10
- (3) The Board may, with the approval of the Secretary of State, direct a commissioning consortium to prepare accounts in respect of such period or periods as may be specified in the direction.
- (4) The Board may, with the approval of the Secretary of State, give directions to a commissioning consortium as to – 15
- (a) the methods and principles according to which its annual or other accounts must be prepared, and
- (b) the form and content of such accounts.
- (5) The annual accounts and, if the Board so directs, accounts prepared by virtue of sub-paragraph (3) must be audited in accordance with the Audit Commission Act 1998 by an auditor or auditors appointed in accordance with arrangements made by the Board for the purposes of this paragraph. 20
- (6) The Comptroller and Auditor General may examine – 25
- (a) the annual accounts and any records relating to them, and
- (b) any report on them by the auditor or auditors.
- (7) A commissioning consortium must send its audited annual accounts, and any audited accounts prepared by it by virtue of sub-paragraph (3), to the Board by no later than the date specified in a direction by the Board.
- (8) The Board may direct a commissioning consortium to send its unaudited annual accounts, and any unaudited accounts prepared by it by virtue of sub-paragraph (3), to the Board by no later than the date specified in a direction by the Board. 30
- (9) Nothing in this paragraph requires a commissioning consortium to keep accounts or records, or to prepare annual accounts, in respect of anything done by it as trustee. 35
- (10) For the purposes of this paragraph “financial year” includes the period which begins on the day the consortium is established and ends on the following 31 March.

Provision of financial information to Board 40

- 13 (1) The Board may direct a commissioning consortium to supply it with such information relating to its accounts or to its income or expenditure, or its use of resources, as may be specified in the direction.

- (2) The power conferred by sub-paragraph (1) includes power to direct a commissioning consortium to supply the Board with—
- (a) estimates of its future income or expenditure or its future use of resources;
 - (b) any information which the Board considers is necessary to enable it to verify any other information supplied to it under sub-paragraph (1). 5
- (3) A commissioning consortium must supply the Board with any information specified in a direction under sub-paragraph (1) within such period as may be specified in the direction. 10
- (4) In this section, a reference to the use of resources is a reference to their expenditure, consumption or reduction in value.

Provision of information required by the Secretary of State

- 14 (1) The Secretary of State may require each commissioning consortium to provide the Board with such information as the Secretary of State considers it necessary to have for the purposes of the functions of the Secretary of State in relation to the health service. 15
- (2) The information must be provided in such form, and at such time or within such period, as the Secretary of State may require.
- (3) The powers conferred by this section must be exercised in the same way in relation to each commissioning consortium. 20
- (4) The Board must give any information obtained by it under sub-paragraph (1) to the Secretary of State, in such form, and at such time or within such period, as the Secretary of State may require.

Incidental powers 25

- 15 The power conferred on a commissioning consortium by section 2 includes in particular power to—
- (a) enter into agreements,
 - (b) acquire and dispose of property, and
 - (c) accept gifts (including property to be held on trust for the purposes of the commissioning consortium). 30

PART 3

TRANSFER ORDERS

- 16 The things that may be transferred under a property transfer scheme or a staff transfer scheme under section 14I include— 35
- (a) property, rights and liabilities that could not otherwise be transferred;
 - (b) property acquired, and rights and liabilities arising, after the making of the scheme;
 - (c) criminal liabilities. 40
- 17 A property transfer scheme or a staff transfer scheme may make supplementary, incidental, transitional and consequential provision and may in particular—

-
- (a) create rights, or impose liabilities, in relation to property or rights transferred;
- (b) make provision about the continuing effect of things done by the transferor in respect of anything transferred;
- (c) make provision about the continuation of things (including legal proceedings) in the process of being done by, on behalf of or in relation to the transferor in respect of anything transferred; 5
- (d) make provision for references to the transferor in an instrument or other document in respect of anything transferred to be treated as references to the transferee. 10
- 18 A property transfer scheme may make provision for the shared ownership or use of property.
- 19 A staff transfer scheme may make provision which is the same or similar to the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246). 15
- 20 A property transfer scheme or a staff transfer scheme may provide—
- (a) for the scheme to be modified by agreement after it comes into effect, and
- (b) for any such modifications to have effect from the date when the original scheme comes into effect.” 20

SCHEDULE 3

Section 43

PHARMACEUTICAL REMUNERATION

“SCHEDULE 12A

PHARMACEUTICAL REMUNERATION

Interpretation 25

- 1 In this Schedule—
- (a) “drugs” includes medicines and listed appliances (within the meaning of section 126), and
- (b) pharmaceutical remuneration means remuneration paid by the Board to persons providing pharmaceutical services or local pharmaceutical services. 30

Pharmaceutical remuneration to be apportioned among consortia

- 2 (1) The Board must determine the elements of pharmaceutical remuneration in respect of which apportionments are to be made in relation to a financial year in accordance with this paragraph. 35
- (2) In this Schedule, those elements of pharmaceutical remuneration are referred to as “designated elements”.
- (3) The Board must notify each commissioning consortium of a determination under sub-paragraph (1).

- (4) The Board must apportion the sums paid by it in respect of each designated element during the financial year among all commissioning consortia, in such manner as the Board thinks appropriate. 5
- (5) In apportioning sums under sub-paragraph (4), the Board may, in particular, take into account the financial consequences of orders for the provision of drugs that are attributable to the members of each consortium. 5
- (6) Where an amount of pharmaceutical remuneration is apportioned to a commissioning consortium, the Board – 10
- (a) may deduct that amount from the sums that it would otherwise pay to the consortium under section 223H(1), and
 - (b) if it does so, must notify the consortium accordingly.
- (7) The Secretary of State may direct the Board that an element of pharmaceutical remuneration specified in the direction is not to be included in a determination under sub-paragraph (1). 15
- (8) In determining the amount to be allotted to a consortium for the purposes of section 223H, the Board must take into account the effect of this Schedule. 20
- (9) For the purposes of sections 223I, 223J and 223K(2) and paragraph 12 of Schedule 1A, any amount of which a consortium is notified under sub-paragraph (6) is to be treated as expenditure of the consortium which is attributable to the performance by it of its functions in the year in question. 25

Other pharmaceutical remuneration

- 3 (1) This paragraph applies in relation to pharmaceutical remuneration paid in a financial year other than – 30
- (a) designated elements of such remuneration, and
 - (b) remuneration of a prescribed description.
- (2) The Board may require a person to reimburse the Board for any pharmaceutical remuneration to which this paragraph applies if the drugs or services to which the remuneration relates were – 35
- (a) ordered by that person, or
 - (b) ordered in the course of the delivery of a service arranged by that person.
- (3) Any sum payable to the Board by virtue of sub-paragraph (2) may be recovered summarily as a civil debt (but this does not affect any other method of recovery).

Exercise of functions 40

- 4 The Board may, with the consent of the Secretary of State – 45
- (a) direct a Special Health Authority to exercise any functions of the Board under this Schedule, or
 - (b) arrange for any other person to exercise any of those functions.”

SCHEDULE 4

Section 45(1)

PART 1: AMENDMENTS TO THE NATIONAL HEALTH SERVICE ACT 2006

PART 1

THE HEALTH SERVICE IN ENGLAND

- | | | | |
|---|--|--|----|
| 1 | (1) For section 2 substitute – | | 5 |
| | “2 General power | | |
| | The Secretary of State, the Board or a commissioning consortium may do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any function conferred on that person by this Act.” | | 10 |
| | (2) For the cross-heading preceding section 2 substitute “General power”. | | |
| 2 | (1) Section 6 (performance of functions outside England) is amended as follows. | | |
| | (2) For subsection (1) substitute – | | |
| | “(1) Where the Secretary of State has a duty or power to provide anything under section 2A or 2B or Schedule 1, that thing may be provided outside England.” | | 15 |
| | (3) After subsection (1) insert – | | |
| | “(1A) Where a commissioning consortium or the Board has a duty or power to arrange for the provision of anything under sections 3, 3A, 3B or 4 or Schedule 1, it may arrange for that thing to be provided outside England.” | | 20 |
| | (4) In subsection (2) for “The Secretary of State’s functions” substitute “The functions of the Secretary of State, the Board and commissioning consortia”. | | |
| 3 | (1) Section 6A (reimbursement of cost of services provided in another EEA state) is amended as follows. | | 25 |
| | (2) In subsection (3)(b) after “Secretary of State” insert “, the Board”. | | |
| | (3) In subsection (7) after “Secretary of State” insert “, the Board”. | | |
| | (4) In subsection (8) in each of paragraphs (a) and (b) – | | |
| | (a) after “Secretary of State” insert “the Board”, and | | |
| | (b) for “either of them” substitute “any of them”. | | 30 |
| | (5) In subsection (9), after “Secretary of State” (in the second place it occurs) insert “, the Board”. | | |
| | (6) In subsection (11), in the definition of “responsible authority” – | | |
| | (a) omit “Strategic Health Authority or”, | | |
| | (b) omit “Primary Care Trust”, | | 35 |
| | (c) before “responsible under” insert “a local authority or commissioning consortium”, and | | |
| | (d) for “securing” substitute “arranging for”. | | |

-
- 4 (1) Section 6B (prior authorisation for the purposes of section 6A) is amended as follows.
- (2) In subsection (2)(b) after “Secretary of State” insert “, the Board”.
- (3) In subsection (5), in each of paragraphs (b) and (c) after “the Secretary of State” insert “, the Board”. 5
- 5 (1) In section 8 (Secretary of State’s directions to health service bodies), in subsection (2) –
- (a) omit paragraph (a), and
- (b) omit paragraph (b).
- (2) In the heading to that section after “to” insert “certain”. 10
- (3) For the cross-heading preceding section 8 substitute “Directions to certain NHS bodies”.
- 6 (1) Section 9 (NHS contracts) is amended as follows.
- (2) In subsection (4) –
- (a) before paragraph (a) insert – 15
- “(za) the Board,
- (zb) a commissioning consortium,”
- (b) omit paragraph (a), and
- (c) omit paragraph (b).
- 7 In section 11 (arrangements to be treated as NHS contracts), in subsection (1) – 20
- (a) after “under which” insert “the Board,”
- (b) omit “a Strategic Health Authority,” and
- (c) omit “a Primary Care Trust”.
- 8 (1) Section 12 (arrangements with other bodies) is amended as follows. 25
- (2) In subsection (1) for “any service under this Act” substitute “anything which the Secretary of State has a duty or power to provide, or arrange for the provision of, under section 2A or 2B or Schedule 1”.
- (3) For subsection (2) substitute –
- “(2) The bodies with whom arrangements may be made under subsection (1) include – 30
- (a) the Board,
- (b) commissioning consortia,
- (c) any other public authorities, and
- (d) voluntary organisations.” 35
- (4) For subsection (3) substitute –
- “(3) The Secretary of State may make available any facilities provided by the Secretary of State under section 2A or 2B or Schedule 1 to any service provider or to any eligible voluntary organisation.
- (3A) In subsection (3) – 40
- “eligible voluntary organisation” means a voluntary organisation eligible for assistance under section 64 or section 65 of the Health Services and Public Health Act 1968;

-
- “service provider” means a person or body with whom the Secretary of State has made an arrangement under subsection (1).”
- (5) In subsection (4) omit –
- (a) paragraph (b), and
 - (b) paragraph (c).
- (6) For the cross-heading preceding section 12 substitute “Arrangements with other bodies”.
- 9 After section 12 insert –
- “12ZA Commissioning arrangements by the Board or consortia**
- (1) This section applies in relation to arrangements made by the Board or a commissioning consortium in the exercise of functions under section 3, 3A, 3B or 4 or Schedule 1.
 - (2) The arrangements may be made with any person or body (including public authorities and voluntary organisations).
 - (3) If the Board or a commissioning consortium arranges for the provision of facilities by a service provider, it may also make arrangements for those facilities to be made available to another service provider or to an eligible voluntary organisation.
 - (4) The Board or a commissioning consortium may make available any of its facilities to –
 - (a) a service provider, or
 - (b) an eligible voluntary organisation.
 - (5) Where facilities are made available under subsection (4) any of the following persons may make available the services of any employee of that person who is employed in connection with the facilities –
 - (a) the Secretary of State,
 - (b) the Board,
 - (c) a commissioning consortium,
 - (d) a Special Health Authority, or
 - (e) a Local Health Board.
 - (6) Goods or materials may be made available under this section either temporarily or permanently.
 - (7) Any power to supply goods or materials under this section includes –
 - (a) a power to purchase or store them, and
 - (b) a power to arrange with third parties for the supply of goods or materials by those third parties.
 - (8) Powers under this section may be exercised on such terms as may be agreed, including terms as to the making of payments.
 - (9) In this section –
 - “eligible voluntary organisation” means a voluntary organisation eligible for assistance under section 64 or section 65 of the Health Services and Public Health Act 1968;

- “service provider” means a person or body with whom the Board or a commissioning consortium has made arrangements in the exercise of the functions mentioned in subsection (1).”
- 10 (1) Section 12A (direct payments for health care) is amended as follows. 5
- (2) In subsection (1) after “The Secretary of State” insert “, the Board or a commissioning consortium”.
- (3) In subsection (2) –
- (a) for paragraph (a) substitute – 10
- “(a) anything that the Secretary of State has a duty or power to provide or arrange under section 2A or 2B or Schedule 1;”
- (b) after that paragraph insert – 15
- “(aa) anything that the Board or a commissioning consortium may or must arrange for the provision of under this Act or any other enactment;”, and
- (c) omit paragraphs (b) and (c).
- (4) Omit subsection (4).
- (5) In subsection (5), omit “or under regulations under subsection (4)”.
- 11 (1) Section 12B (regulations about direct payments) is amended as follows. 20
- (2) In subsection (2), in paragraphs (d), (g), (h) and (j), for “or the Primary Care Trust” substitute “, the Board or a commissioning consortium”.
- (3) In subsection (4) –
- (a) for “or the Primary Care Trust”, in the first place it occurs, substitute “, the Board or a commissioning consortium”, and 25
- (b) for “or the Primary Care Trust”, in the second place it occurs, substitute “the Board or the commissioning consortium (as the case may be)”.
- (4) In subsection (5) –
- (a) in paragraph (a), after “the Secretary of State” insert “or arranged for by the Board or a commissioning consortium (as the case may be)”, and 30
- (b) in paragraph (b) for “a Primary Care Trust with respect to the provision of” substitute “the Board or a commissioning consortium with respect to the arrangement for the provision of”. 35
- 12 In section 12C (direct payments pilot schemes), in subsection (9), for “the powers conferred by section 12A(1) or by regulations under section 12A(4)” substitute “the power conferred by section 12A(1)”.
- 13 In section 12D (arrangements with other bodies relating to direct payments) – 40
- (a) in subsection (1) after “the Secretary of State” insert “, the Board or a commissioning consortium”, and
- (b) in subsection (3) after “the Secretary of State” insert “, the Board or a commissioning consortium”.

PART 2

NHS BODIES

- | | | |
|----|--|----|
| 14 | In section 28 (special health authorities), omit subsection (6). | |
| 15 | In section 67 (effect of intervention orders), in subsection (1) – | |
| | (a) in paragraph (a) – | 5 |
| | (i) omit “Strategic Health Authority,” and | |
| | (ii) omit “Primary Care Trust,” and | |
| | (b) in paragraph (b) – | |
| | (i) omit “Strategic Health Authority,” and | |
| | (ii) omit “Primary Care Trust,”. | 10 |
| 16 | In section 70 (transfer of residual liabilities) – | |
| | (a) in subsection (1) – | |
| | (i) omit “a Strategic Health Authority,” and | |
| | (ii) omit “a Primary Care Trust,” and | |
| | (b) in the heading, at the end insert “of certain health service bodies”. | 15 |
| 17 | (1) Section 71 (schemes for meeting losses and liabilities in respect of certain health service bodies) is amended as follows. | |
| | (2) In subsection (2) – | |
| | (a) after “are –” insert – | |
| | “(za) the Board, | 20 |
| | (zb) commissioning consortia,” | |
| | (b) omit paragraph (a), | |
| | (c) omit paragraph (b), and | |
| | (d) in paragraph (i) for “paragraphs (a) to (h)” (in each place where it occurs) substitute “paragraphs (za) to (h)”. | 25 |
| | (3) In subsection (3)(a) – | |
| | (a) after “the Secretary of State” insert “or the Board”, | |
| | (b) omit “Strategic Health Authority,” and | |
| | (c) omit “Primary Care Trust,”. | |
| | (4) In subsection (5), for “(a) to (d),” substitute “(c), (d),”. | 30 |
| | (5) In subsection (6) – | |
| | (a) after “the Secretary of State,” insert “the Board or”, | |
| | (b) omit “Strategic Health Authority,” and | |
| | (c) omit “Primary Care Trust,”. | |
| 18 | In section 73 (directions and regulations), in subsection (1) omit paragraphs (c) to (f). | 35 |
| 19 | Omit Schedule 2. | |
| 20 | Omit Schedule 3. | |
| 21 | In Schedule 4, in paragraph 15, omit sub-paragraphs (2) and (3). | |
| 22 | (1) Schedule 6 (special health authorities established under section 28) is amended as follows. | 40 |

- (2) In paragraph 3(8) –
 - (a) for “to a Strategic Health Authority” substitute “to the Board”, and
 - (b) for “a Strategic Health Authority” substitute “the Board”.
- (3) In paragraph 3(12) –
 - (a) in paragraph (a) for “of a Strategic Health Authority” substitute “of the Board”, and 5
 - (b) in paragraph (b) omit “or by a Strategic Health Authority”.
- (4) In paragraph 13 for “a Strategic Health Authority” substitute “the Board”.

PART 3

LOCAL AUTHORITIES 10

- 23 In section 74 (supply of goods and services by local authorities), in subsection (1)(a) –
 - (a) at the beginning insert “the Board and”,
 - (b) after “any” insert “commissioning consortium or”,
 - (c) omit “Strategic Health Authority,” and 15
 - (d) omit “or Primary Care Trust”.
- 24 In section 76 (power of local authorities to make payments), in subsection (1) –
 - (a) after the first “to” insert “the Board, a commissioning consortium”,
 - (b) omit “a Strategic Health Authority,” and 20
 - (c) omit “a Primary Care Trust”.
- 25 In section 77 (Care Trusts), in each of subsections (1)(a), (10) and (12) omit “a Primary Care Trust or”.
- 26 (1) Section 80 (supply of goods and services by the Secretary of State) is amended as follows. 25
 - (2) In subsection (1) –
 - (a) in paragraph (a), after “The Secretary of State” insert “, the Board or a commissioning consortium”, and
 - (b) in paragraph (b) for “he” substitute “the Secretary of State”.
 - (3) In subsection (3) – 30
 - (a) in paragraph (a) omit “or by a Primary Care Trust”, and
 - (b) in paragraph (b) –
 - (i) omit “a Strategic Health Authority,” and
 - (ii) omit “a Primary Care Trust,”.
 - (4) After subsection (3) insert – 35
 - “(3A) The Board or a commissioning consortium may make available to persons falling within subsection (1) –
 - (a) any facilities provided by the Board or (as the case may be) the consortium for any service under this Act, and
 - (b) the services of persons employed by the Board or (as the case may be) the consortium.” 40
 - (5) In subsection (5), for “The Secretary of State” substitute “The Board”.

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- (6) In subsection (6) –
- (a) in paragraph (a), after “provided” insert “by the Secretary of State”,
 - (b) in paragraph (b) –
 - (i) omit “a Strategic Health Authority,” and
 - (ii) omit “a Primary Care Trust,” and
 - (c) in paragraph (c) –
 - (i) omit “a Strategic Health Authority,” and
 - (ii) omit “a Primary Care Trust.”
- (7) After subsection (6) insert –
- “(6A) The Board and each commissioning consortium must make available to local authorities –
- (a) any services (other than the services of any person) or other facilities the provision of which is arranged by the Board or (as the case may be) the consortium under this Act, and
 - (b) the services of persons employed by the Board or (as the case may be) the consortium,
- so far as is reasonably necessary and practicable to enable local authorities to discharge their functions relating to social services, education and public health.”
- (8) In subsection (7) –
- (a) for “The Secretary of State” substitute “The Board”, and
 - (b) omit paragraph (e).
- (9) After that subsection insert –
- “(8) The Secretary of State may arrange to make available to local authorities the services of persons providing Special Health Authorities or Local Health Boards with services of a kind provided as part of the health service, so far as is reasonably necessary and practicable to enable local authorities to discharge their functions relating to social services, education and public health.”
- (10) In the title to section 80, after “Secretary of State” insert “, the Board and consortia”.
- (11) Until the commencement of section 29 subsection (8) of section 80 (as inserted by sub-paragraph (9)) has effect as if after “Special Health Authorities” there were inserted “, Primary Care Trusts”.
- 27 (1) Section 81 (conditions of supply under section 80) is amended as follows. 35
- (2) In subsection (1) –
- (a) for the words from the beginning to “that section” substitute “Before a person makes the services of any officer available under section 80(3)(b), (3A)(b), (6)(b) or (c) or (6A)(b), the person must”, and
 - (b) in paragraph (a) for “the Secretary of State” substitute “the person”.
- (3) In subsection (2) –
- (a) for “The Secretary of State” substitute “The person concerned”, and
 - (b) for “he” substitute “it”.
- (4) In subsection (3) –
- (a) omit “Strategic Health Authorities,” and

- (b) omit “Primary Care Trusts,”.
- (5) In subsection (4) for “the Secretary of State” substitute “the person who makes the services available”.
- (6) In subsection (5) –
- (a) for the words from the beginning to “section 80(6)” substitute “A person who makes services or facilities available under section 80(6) or (6A) may make such charges in respect of them”, and
 - (b) for “the Secretary of State” substitute “the person”.
- PART 4
- MEDICAL SERVICES
- 28 (1) Section 83 (duty relating to primary medical services) is amended as follows.
- (2) For subsections (1) and (2) substitute –
- “(1) The Board must, to the extent that it considers necessary to meet all reasonable requirements, exercise its powers so as to secure the provision of primary medical services throughout England.
 - (2) The Board may (in addition to any other power conferred on it) make such arrangements for the provision of primary medical services as it considers appropriate; and it may in particular make contractual arrangements with any person.
 - (2A) Arrangements made for the purposes of subsection (1) or (2) may include arrangements for the performance of a service outside England.”
- (3) In subsection (3) of that section, for “Each Primary Care Trust” substitute “The Board”.
- (4) Omit subsection (4).
- (5) For the cross-heading preceding that section substitute “Duty of the Board in relation to primary medical services”.
- 29 (1) Section 84 (general medical services contracts: introductory) is amended as follows.
- (2) In subsection (1), for “A Primary Care Trust” substitute “The Board”.
 - (3) In subsections (3) and (5), for “the Primary Care Trust” substitute “the Board”.
 - (4) In subsection (4), for paragraph (b) substitute –
 - “(b) services to be performed outside England.”
- 30 In section 86 (persons eligible to enter into general medical services contracts), in subsection (1), for “A Primary Care Trust” substitute “The Board”.
- 31 In section 87 (general medical services contracts: payments), in subsection (3)(d), for “a Primary Care Trust” substitute “the Board”.
- 32 (1) In section 89 (general medical services contracts: required terms), for “a Primary Care Trust” substitute “the Board”.

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- (2) The variations to contract terms that may be imposed by virtue of subsection (2)(d) of that section include, in particular, variations in consequence of the establishment of commissioning consortia.
- 33 (1) Section 91 (persons performing primary medical services) is amended as follows. 5
- (2) In the following provisions, for “a Primary Care Trust” substitute “the Board” –
- (a) subsection (1), in each place it occurs,
- (b) subsection (3)(j),
- (c) subsection (4)(a), (b) and (d), and 10
- (d) subsection (6)(a) and (b).
- (3) In subsection (2), for paragraph (b) substitute –
- “(b) the Board is responsible for a medical service if it secures its provision by or under any enactment.”
- (4) In subsection (3), in paragraph (c), omit the words from “as to” to “, and”. 15
- 34 (1) Section 92 (arrangements by Strategic Health Authorities for the provision of primary medical services) is amended as follows.
- (2) For subsection (1) substitute –
- “(1) The Board may make agreements, other than arrangements pursuant to section 83(2) or general medical services contracts, under which primary medical services are provided.” 20
- (3) Omit subsection (6).
- (4) Omit subsection (7).
- (5) For the title to that section substitute “Arrangements by the Board for the provision of primary medical services”. 25
- (6) The provision which may be made by virtue of section 277(8)(a) of this Act in an order under section 279 of this Act providing for the commencement of this paragraph includes, in particular, provision enabling the National Health Service Commissioning Board to direct Primary Care Trusts to exercise its functions under section 92 pending the commencement of section 29 of this Act. 30
- 35 (1) Section 93 (participants in section 92 arrangements) is amended as follows.
- (2) In subsection (1) –
- (a) for “A Strategic Health Authority” substitute “The Board”, and
- (b) omit paragraph (g). 35
- (3) In subsection (3), in the definition of “NHS employee”, in paragraph (b), omit “Primary Care Trust or”.
- (4) In that subsection, in the definition of “qualifying body”, for “(e) or (g)” substitute “or (e)”.
- 36 (1) Section 94 (regulations about section 92 arrangements) is amended as follows. 40
- (2) In subsection (2), for “Strategic Health Authorities” substitute “the Board”.

- (3) In subsection (3), after paragraph (c) insert—
 “(ca) make provision with respect to the performance outside England of services to be provided in accordance with section 92 arrangements”.
- (4) In subsection (6), for “a Primary Care Trust” substitute “the Board”. 5
- (5) The variations of arrangements which may be imposed by virtue of subsection (3)(f) include, in particular, variations in consequence of the establishment of commissioning consortia.
- 37 Omit section 95 (transfer of liabilities relating to section 92 arrangements).
- 38 (1) Section 96 (assistance and support) is amended as follows. 10
- (2) In subsection (1) —
 (a) for “A Primary Care Trust” substitute “The Board”, and
 (b) before paragraph (a) insert—
 “(za) primary medical services pursuant to section 83(2),”.
- (3) In subsection (2), for “a Primary Care Trust” substitute “the Board”, and for “the Primary Care Trust” substitute “the Board”. 15
- 39 (1) Section 97 (Local Medical Committees) is amended as follows.
- (2) In subsection (1), for the words from the beginning to “other Primary Care Trusts” substitute “The Board may recognise a committee formed for an area”. 20
- (3) In subsection (3) —
 (a) in paragraph (a), omit sub-paragraph (i), and
 (b) in paragraph (b), for “the Primary Care Trust” substitute “the Board”.
- (4) In subsection (6), for “a Primary Care Trust” substitute “the Board”.
- (5) Omit subsection (7). 25
- (6) In subsection (10) —
 (a) for “A Primary Care Trust” substitute “The Board”, and
 (b) in paragraphs (a) and (b), for “the Primary Care Trust” substitute “the Board”.

PART 5 30

DENTAL SERVICES

- 40 (1) Section 99 (duty relating to primary dental services) is amended as follows.
- (2) For subsection (1) substitute—
 “(1) The Board must, to the extent that it considers necessary to meet all reasonable requirements, exercise its powers so as to secure the provision of primary dental services throughout England. 35
 (1A) Arrangements made for the purposes of subsection (1) may include arrangements for the performance of a service outside England.”
- (3) Omit subsection (2).

-
- (4) In subsection (3) –
- (a) for “Each Primary Care Trust” substitute “The Board”, and
 - (b) for “for which it makes provision” substitute “for which provision is made”.
- (5) Omit subsection (4). 5
- (6) For the cross-heading preceding that section substitute “Duty of the Board in relation to primary dental services”.
- 41 (1) Section 100 (general dental services contracts: introductory) is amended as follows.
- (2) In subsection (1), for “A Primary Care Trust” substitute “The Board”. 10
 - (3) In subsections (3) and (4), for “the Primary Care Trust” substitute “the Board”.
 - (4) In subsection (3), in paragraph (a), after “dental services” insert “or services which are to be performed outside England”.
- 42 In section 102 (persons eligible to enter into general dental services contracts), in subsection (1), for “A Primary Care Trust” substitute “The Board”. 15
- 43 In section 103 (general dental services contracts: payments), in subsection (3)(d), for “a Primary Care Trust” substitute “the Board”.
- 44 In section 104 (general dental services contracts: required terms), for “a Primary Care Trust” substitute “the Board”. 20
- 45 (1) Section 106 (persons performing primary dental services) is amended as follows.
- (2) In the following provisions, for “a Primary Care Trust” substitute “the Board” – 25
 - (a) subsection (1), in each place it occurs,
 - (b) subsection (3)(j),
 - (c) subsection (4)(a), (b) and (d), and
 - (d) subsection (6)(a) and (b).
 - (3) In subsection (2), for paragraph (b) substitute – 30

“(b) the Board is responsible for a dental service if it secures its provision by or under any enactment.”
 - (4) In subsection (3), in paragraph (c), omit the words from “as to” to “, and”.
- 46 (1) Section 107 (arrangements by Strategic Health Authorities for the provision of primary dental services) is amended as follows. 35
- (2) For subsection (1) substitute –

“(1) The Board may make agreements, other than general dental services contracts, under which primary dental services are provided.”
 - (3) Omit subsection (7).
 - (4) For the title to that section substitute “Arrangements by the Board for the provision of primary dental services”. 40

- (5) The provision which may be made by virtue of section 277(8)(a) of this Act in an order under section 279 of this Act providing for the commencement of this paragraph includes, in particular, provision enabling the National Health Service Commissioning Board to direct Primary Care Trusts to exercise its functions under section 107 pending the commencement of section 29 of this Act. 5
- 47 (1) Section 108 (participants in section 107 arrangements) is amended as follows.
- (2) In subsection (1) –
- (a) for “A Strategic Health Authority” substitute “The Board”, and 10
- (b) omit paragraph (g).
- (3) In subsection (3), in the definition of “NHS employee”, in paragraph (b), omit “Primary Care Trust or”.
- 48 (1) Section 109 (regulations about section 107 arrangements) is amended as follows. 15
- (2) In subsection (2), for “Strategic Health Authorities” substitute “the Board”.
- (3) In subsection (3), after paragraph (c) insert –
- “(ca) make provision with respect to the performance outside England of services to be provided in accordance with section 107 arrangements,”. 20
- (4) In subsection (6), for “a Primary Care Trust” substitute “the Board”.
- 49 Omit section 110 (transfer of liabilities relating to section 107 arrangements).
- 50 (1) Section 112 (assistance and support) is amended as follows.
- (2) In subsection (1), for “A Primary Care Trust” substitute “The Board”.
- (3) In subsection (2) – 25
- (a) for “a Primary Care Trust” substitute “the Board”, and
- (b) for “the Primary Care Trust” substitute “the Board”.
- 51 (1) Section 113 (Local Dental Committees) is amended as follows.
- (2) In subsection (1), for the words from the beginning to “other Primary Care Trusts” substitute “The Board may recognise a committee formed for an area”. 30
- (3) In subsection (3)(b), for “the Primary Care Trust” substitute “the Board”.
- (4) In subsection (6), for “a Primary Care Trust” substitute “the Board”.
- (5) Omit subsection (7).
- (6) In subsection (10) – 35
- (a) for “A Primary Care Trust” substitute “The Board”, and
- (b) in paragraphs (a) and (b), for “the Primary Care Trust” substitute “the Board”.

PART 6

OPHTHALMIC SERVICES

- 52 (1) Section 115 (duty relating to primary ophthalmic services) is amended as follows.
- (2) In subsection (1), for the words from the beginning to “area,” substitute “The Board must exercise its powers so as to secure the provision throughout England”.
- (3) After that subsection insert –
- “(1A) Arrangements made for the purposes of subsection (1) may include arrangements for the performance of a service outside England.”
- (4) For subsection (4) substitute –
- “(4) The Board may (in addition to any other power conferred on it) make such arrangements for the provision of primary ophthalmic services as it considers appropriate; and it may in particular make contractual arrangements with any person.
- “(4A) Arrangements made for the purposes of subsection (4) may include arrangements for the performance of a service outside England.”
- (5) In subsection (5), for “Each Primary Care Trust” substitute “The Board”.
- (6) Omit subsection (6).
- (7) In subsection (9), in paragraph (b), for “(d)” substitute “(e)”.
- (8) For the cross-heading preceding that section substitute “Duty of the Board in relation to primary ophthalmic services”.
- 53 (1) Section 117 (general ophthalmic services contracts: introductory) is amended as follows.
- (2) In subsection (1), for “A Primary Care Trust” substitute “The Board”.
- (3) In subsections (3) and (5), for “the Primary Care Trust” substitute “the Board”.
- (4) In subsection (4), for paragraph (b) substitute –
- “(b) services which are to be performed outside England.”
- 54 In section 118 (persons eligible to enter into general ophthalmic services contracts), in subsection (1), for “A Primary Care Trust” substitute “The Board”.
- 55 In section 119 (exclusion of contractors), for “a Primary Care Trust” substitute “the Board”.
- 56 In section 120 (general ophthalmic services contracts: payments), in subsection (3)(d), for “a Primary Care Trust” substitute “the Board”.
- 57 In section 121 (general ophthalmic services contracts: other required terms), in subsection (3)(a), for “a Primary Care Trust” substitute “the Board”.
- 58 (1) Section 123 (persons performing primary ophthalmic services) is amended as follows.

- (2) In the following provisions, for “a Primary Care Trust” substitute “the Board” –
- (a) subsection (1), in each place it occurs,
 - (b) subsection (3)(j), and
 - (c) subsection (4)(a), (b) and (d). 5
- (3) In subsection (2), for paragraph (b) substitute –
- “(b) the Board is responsible for an ophthalmic service if it secures its provision by or under any enactment.”
- (4) In subsection (3), in paragraph (c), omit the words from “as to” to “, and”.
- 59 (1) Section 124 (primary ophthalmic services: assistance and support) is amended as follows. 10
- (2) In subsection (1) –
- (a) for “A Primary Care Trust” substitute “The Board”, and
 - (b) at the end insert “or primary ophthalmic services that fall within section 115(4)”. 15
- (3) In subsection (2), for “a Primary Care Trust” substitute “the Board”, and for “the Primary Care Trust” substitute “the Board”.
- 60 (1) Section 125 (Local Optical Committees) is amended as follows.
- (2) In subsection (1), for the words from the beginning to “other Primary Care Trusts” substitute “The Board may recognise a committee formed for an area”. 20
- (3) In subsection (3) –
- (a) in paragraph (a), omit “, whether under section 115(4)(a), or”, and
 - (b) in paragraph (b), for “the Primary Care Trust” substitute “the Board”.
- (4) In subsection (7), for “a Primary Care Trust” substitute “the Board”. 25
- (5) In subsection (10) –
- (a) for “A Primary Care Trust” substitute “The Board”, and
 - (b) in paragraphs (a) and (b), for “the Primary Care Trust” substitute “the Board”.

PART 7 30

PHARMACEUTICAL SERVICES

- 61 (1) Section 126 (arrangements for pharmaceutical services) is amended as follows.
- (2) In subsection (1), for “Each Primary Care Trust” substitute “The Board”.
- (3) In subsection (3), for the words from “as respects” to “that area” substitute “for the provision to persons who are in England”. 35
- (4) In subsection (6), for “a Primary Care Trust” substitute “the Board”.
- (5) Omit subsection (7).
- 62 (1) Section 127 (arrangements for additional pharmaceutical services) is amended as follows. 40

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- (2) In subsections (1)(a) and (b) and (2), for “a Primary Care Trust”, substitute “the Board”.
- (3) In subsection (1)(a), for “within or outside its area” substitute “in England”.
- (4) In subsection (2), omit the words from “(whether” to the end.
- 63 (1) Section 128 (terms and conditions of arrangements under section 127) is amended as follows. 5
- (2) In subsection (1), for “the Primary Care Trust to which they apply” substitute “the Board”.
- (3) In subsection (4), for “A Primary Care Trust” substitute “The Board”.
- (4) In subsection (5), for “a Primary Care Trust” substitute “the Board”. 10
- 64 (1) Section 129 (regulations as to pharmaceutical services) is amended as follows.
- (2) In subsection (1), for “a Primary Care Trust” substitute “the Board”.
- (3) In subsection (2) – 15
- (a) in paragraph (a) –
- (i) for “a Primary Care Trust” substitute “the Board”, and
- (ii) for “the area of the Primary Care Trust” substitute “England”,
- (b) in paragraph (b), for “a Primary Care Trust” substitute “the Board”, and
- (c) in paragraph (c), for “the Primary Care Trust” substitute “the Board”. 20
- (4) After subsection (2ZA) (inserted by section 191(3)) insert –
- “(2ZB) Regulations under subsection (2)(a) may, in particular, require a list of persons to be prepared by reference to the area in which the premises from which the services are provided are situated (and regulations imposing that requirement must prescribe the description of area by reference to which the list is to be prepared).” 25
- (5) In subsection (2A), for “The Primary Care Trust” substitute “The Board”,
- (6) In subsections (2C), (3A), (4), (5) and (8), for “the Primary Care Trust”, in each place it appears, substitute “the Board”.
- (7) In subsection (6) – 30
- (a) in paragraphs (za), (a), (b), (c), (d), (g), (h), (i), (j) and (k), for “a Primary Care Trust” substitute “the Board”,
- (b) in paragraphs (b), (e) and (k), for “the Primary Care Trust”, in each place it appears, substitute “the Board”, and
- (c) in paragraph (f), for “that Primary Care Trust” substitute “the Board”. 35
- (8) In subsection (6)(c) –
- (a) for “the Primary Care Trust”, in the first place it appears, substitute “the Board”, and
- (b) omit “in the area of the Primary Care Trust”. 40
- (9) In subsection (10A), for “Primary Care Trusts” substitute “The Board”.

- 65 In section 130 (regulations about appeals from decisions on applications for inclusion in pharmaceutical list), in subsection (2) –
(a) for “a Primary Care Trust” substitute “the Board”, and
(b) for “the Primary Care Trust” substitute “the Board”.
- 66 (1) Section 131 (power to charge fee to applicants) is amended as follows. 5
(2) In subsection (1), for “a Primary Care Trust” substitute “the Board”.
(3) In subsections (2)(b), (3)(b) and (5), for “the Primary Care Trust” substitute “the Board”.
(4) In subsection (3)(a), omit the words from “and such” to the end.
- 67 (1) Section 132 (persons authorised to provide pharmaceutical services) is 10
amended as follows.
(2) In subsections (1) and (4)(a), (b), (c), (d) and (e), for “a Primary Care Trust” substitute “the Board”.
(3) In subsection (3) –
(a) for “each Primary Care Trust” substitute “the Board”, and 15
(b) for “the Primary Care Trust” substitute “the Board”.
(4) In subsection (4), after paragraph (a) insert –
“(aa) requiring a list of medical practitioners referred to in
subsection (3) to be prepared by reference to an area of a
prescribed description,”. 20
(5) In subsection (5) –
(a) for “a Primary Care Trust” substitute “the Board”, and
(b) for “the Primary Care Trust” substitute “the Board”.
- 68 (1) Section 133 (inadequate provision of pharmaceutical services) is amended as 25
follows.
(2) In subsection (1)(a) –
(a) for “the area, or part of the area, of a Primary Care Trust” substitute
“any part of England”, and
(b) omit “area or”.
(3) In subsection (1)(b), for “any such area or part” substitute “any part of 30
England”.
(4) In subsection (2)(a), for “the Primary Care Trust” substitute “the Board”.
- 69 (1) Section 134 (pilot schemes) is amended as follows.
(2) In subsection (1), for “Primary Care Trusts” substitute “The Board”.
(3) In subsection (2) – 35
(a) in paragraph (a), for “a Primary Care Trust” substitute “the Board”,
(b) after that paragraph insert “and”,
(c) in paragraph (b), omit “(otherwise than by the Primary Care Trust)”,
and
(d) omit paragraph (c) and the preceding “and”. 40
(4) In subsection (5), for “a Primary Care Trust” substitute “the Board”.

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- 70 In section 136 (designation of priority neighbourhoods or premises), in subsections (1) and (2)(b), for “a Primary Care Trust” substitute “the Board.”
- 71 In section 137 (reviews of pilot schemes), in subsection (3)(a), for “the Primary Care Trust concerned” substitute “the Board”.
- 72 (1) Section 138 (variation and termination of pilot schemes) is amended as follows. 5
 (2) In subsection (1), for “Primary Care Trusts” substitute “the Board”.
 (3) In subsections (2) and (3), for “the Primary Care Trust concerned” substitute “the Board”.
- 73 (1) Section 140 (funding of preparatory work) is amended as follows. 10
 (2) In subsection (1), for “Primary Care Trusts” substitute “the Board”.
 (3) In subsection (3)(b) and (c), for “a Primary Care Trust” substitute “the Board”.
- 74 (1) In section 144 (local pharmaceutical services schemes) – 15
 (a) for “Primary Care Trusts” substitute “the Board or the Secretary of State”, and
 (b) omit “or Strategic Health Authorities”.
 (2) In consequence of the repeal made by sub-paragraph (1)(b), omit section 29(4) of the Health Act 2009.
- 75 (1) Section 148 (conditional inclusion in pharmaceutical lists) is amended as follows. 20
 (2) In subsection (1), in paragraph (a), for “the Primary Care Trust in whose list he is included” substitute “the Board”.
 (3) In subsections (1)(b), (c) and (e), (3)(a) and (b)(ii) and (iii) and (4), for “the Primary Care Trust”, in each place it appears, substitute “the Board”. 25
 (4) In subsection (6), for “a Primary Care Trust” substitute “the Board”.
- 76 (1) Section 150A (notices and penalties) is amended as follows.
 (2) In subsection (1) – 30
 (a) for “a Primary Care Trust” substitute “the Board”, and
 (b) for “the Primary Care Trust” substitute “the Board”.
 (3) In subsection (2), for “Primary Care Trusts” substitute “the Board”.
- 77 (1) Section 151 (disqualification of practitioners) is amended as follows.
 (2) In subsection (1), for “a Primary Care Trust” substitute “the Board”.
 (3) In subsection (5), for “the Primary Care Trust” substitute “the Board”.
 (4) In subsection (6), for “The Primary Care Trust” substitute “The Board”. 35
- 78 (1) Section 152 (contingent removal) is amended as follows.
 (2) In subsections (1) and (3), for “the Primary Care Trust” substitute “the Board”.
 (3) In subsection (4), for “The Primary Care Trust” substitute “The Board”.

- 79 In section 154 (suspension), in subsections (1), (3), (4), (6)(b) and (c) and (8) (in each place it appears), for “the Primary Care Trust” substitute “the Board”.
- 80 (1) Section 155 (suspension pending removal) is amended as follows.
- (2) In subsections (1), (3) and (6), for “the Primary Care Trust” substitute “the Board”. 5
- (3) In subsection (5), for “The Primary Car Trust” substitute “The Board”.
- 81 (1) Section 157 (review of decisions) is amended as follows.
- (2) In subsection (1), for “The Primary Care Trust” substitute “The Board”.
- (3) In subsections (2)(a) and (3), for “the Primary Care Trust” substitute “the Board”. 10
- 82 (1) Section 158 (appeals) is amended as follows.
- (2) In subsection (1), for “a Primary Care Trust” substitute “the Board”.
- (3) In subsections (2) and (6), for “The Primary Care Trust” substitute “The Board”. 15
- (4) In subsections (3), (4) and (5)(a) and (b) for “the Primary Care Trust” substitute “the Board”.
- (5) In subsection (7), for “Primary Care Trusts” substitute “the Board”.
- 83 (1) Section 159 (national disqualification) is amended as follows.
- (2) In subsection (1), for “each Primary Care Trust”, in each place it appears, substitute “the Board”. 20
- (3) In subsection (3), for “a Primary Care Trust” substitute “the Board”.
- (4) In subsection (4) –
- (a) for “The Primary Care Trust” substitute “The Board”, and
- (b) for “the Primary Care Trust” substitute “the Board”. 25
- (5) In subsection (5), for “the Primary Care Trust’s” substitute “the Board’s”.
- (6) In subsection (6) –
- (a) in paragraph (a), for “no Primary Care Trust or” substitute “neither the Board nor a”, and
- (b) in paragraph (b), for “each Primary Care Trust” substitute “the Board (if he is included in a list prepared by it)”. 30
- 84 In section 160 (notification of decisions), for “a Primary Care Trust” substitute “the Board”.
- 85 In section 161 (withdrawal from lists), in paragraphs (a) and (b), for “a Primary Care Trust” substitute “the Board”. 35
- 86 (1) Section 162 (regulations about decisions under Chapter 6 of Part 7) is amended as follows.
- (2) In subsections (1) and (2)(b), for “a Primary Care Trust” substitute “the Board”.

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- (3) In subsections (2)(c) and (3), for “the Primary Care Trust” substitute “the Board”. –
- 87 (1) Section 164 (remuneration for persons providing pharmaceutical services) is amended as follows.
- (2) In subsection (3)(b), for “any Primary Care Trust” substitute “the Board”. 5
- (3) In subsection (4A)(a), for “a Primary Care Trust” substitute “the Board”.
- 88 (1) Section 166 (indemnity cover) is amended as follows.
- (2) In subsection (2)(b) –
- (a) for “a Primary Care Trust” substitute “the Board”, and
- (b) for “the Primary Care Trust”, in each place it appears, substitute “the Board”. 10
- (3) In subsection (3), in paragraph (a) of the definition of “indemnity cover”, for “a Primary Care Trust” substitute “the Board”.
- 89 (1) Section 167 (local pharmaceutical committees) is amended as follows.
- (2) In subsection (1), for the words from the beginning to “other Primary Care Trusts,” substitute “The Board may recognise a committee formed for an area”. 15
- (3) In subsections (2)(a) and (3)(a), omit “in the Primary Care Trust’s area”.
- (4) In subsections (2)(a) and (b), (3)(a) and (b), (9), (10) and (11), for “the Primary Care Trust” substitute “the Board”. 20
- (5) In subsections (6) and (7), for “a Primary Care Trust” substitute “the Board”.
- (6) In subsection (9), for “A Primary Care Trust” substitute “The Board”.
- 90 (1) Schedule 11 (pilot schemes) is amended as follows.
- (2) In paragraph 1 (initiation of pilot schemes), in sub-paragraph (1)(a), for “a Primary Care Trust” substitute “the Board”. 25
- (3) In paragraph 2 (preliminary steps) –
- (a) in sub-paragraph (1), for “the Primary Care Trust concerned” substitute “the Board”,
- (b) in sub-paragraphs (2), (3), (4) and (5)(a) and (b), for “a Primary Care Trust” substitute “the Board”, 30
- (c) in sub-paragraph (3)(b), for “the Primary Care Trust” substitute “the Board”, and
- (d) in sub-paragraph (5)(d) –
- (i) for “Primary Care Trusts” substitute “the Board”, and
- (ii) for “them” substitute “it”. 35
- (4) In paragraph 3 (approvals) –
- (a) in sub-paragraphs (2) and (3)(b), for “the Primary Care Trust” substitute “the Board”, and
- (b) in sub-paragraph (3)(a), for “the Primary Care Trust concerned” substitute “the Board”. 40
- (5) In paragraph 4 (preliminary approval) –

- (a) in sub-paragraphs (1) and (4), for “a Primary Care Trust” substitute “the Board”, and
 - (b) in sub-paragraph (2), for “The Primary Care Trust” substitute “The Board”.
- (6) In paragraph 5 (effect of proposals on existing services) – 5
- (a) in sub-paragraph (1)(a) –
 - (i) for “the Primary Care Trust”, in the first place it appears, substitute “the Board”, and
 - (ii) for “the area of the Primary Care Trust” substitute “the area concerned”, 10
 - (b) in sub-paragraph (1)(b), for the words from “supplied” to the end substitute “prepared under sub-paragraph (3)”,
 - (c) in sub-paragraph (3) –
 - (i) for “a Primary Care Trust” substitute “the Board”,
 - (ii) for “the area of another Primary Care Trust” substitute “another area”, and 15
 - (iii) for “consult that other Primary Care Trust about” substitute “prepare an assessment of the likely effect on those services of the implementation of”, and
 - (d) omit sub-paragraph (4). 20
- (7) In paragraph 7 (making a scheme) –
- (a) in sub-paragraphs (1), (2) and (4), for “the Primary Care Trust concerned” substitute “the Board”, and
 - (b) in sub-paragraph (1), for “the Primary Care Trust must” substitute “the Board must”. 25
- (8) Any pilot scheme under Chapter 2 of Part 7 of the National Health Service Act 2006 having effect immediately before the commencement of this paragraph is to continue to have effect as if it had been established by the Board; and nothing in this paragraph or paragraphs 57 to 61 affects the validity of anything done under or for the purposes of the scheme. 30
- 91 (1) Schedule 12 (LPS schemes) is amended as follows.
- (2) In paragraph 1 (provision of local pharmaceutical services) –
- (a) in sub-paragraph (1) –
 - (i) for “Primary Care Trusts” substitute “The Board or the Secretary of State”, and 35
 - (ii) omit “or Strategic Health Authorities”,
 - (b) in sub-paragraph (2) –
 - (i) in paragraph (a), for “a Primary Care Trust” substitute “the Board or the Secretary of State (the “commissioner””,
 - (ii) in that paragraph, omit “or Strategic Health Authority (the “commissioning body””, and 40
 - (iii) in paragraph (b), for “the commissioning body” substitute “the commissioner”,
 - (c) omit sub-paragraph (2A),
 - (d) for sub-paragraph (2B) substitute – 45
 - “(2B) The Secretary of State may establish an LPS scheme only where the other party is the Board.

- (2C) The Board may provide local pharmaceutical services under an LPS scheme only in such circumstances as may be prescribed.”, and
- (e) in each of sub-paragraphs (5) and (6), for “a Primary Care Trust” substitute “the Board”. 5
- (3) In paragraph 2 (designation of priority neighbourhoods or premises) –
- (a) in each of sub-paragraphs (1) and (2)(b), for “a Primary Care Trust” substitute “the Board”, and
- (b) in sub-paragraph (1), omit “or Strategic Health Authority”.
- (4) In paragraph 3 (regulations) – 10
- (a) in sub-paragraph (2), for “the commissioning body” substitute “the commissioner”, and
- (b) in sub-paragraph (3)(k) –
- (i) for “Primary Care Trusts” substitute “the Board or the Secretary of State”, and 15
- (ii) omit “or Strategic Health Authorities”.
- (5) In consequence of the repeals made by this paragraph, omit section 29(7), (8)(a) and (c), (10), (12) and (15) of the Health Act 2009.
- (6) Any LPS scheme under Chapter 3 of Part 7 of the National Health Service Act 2006 having effect immediately before the commencement of this paragraph is to continue to have effect as if it had been established by the Board; and nothing in this paragraph or paragraph 62 affects the validity of anything done under or for the purposes of the scheme. 20

PART 8

CHARGING 25

- 92 In section 176 (dental charging) –
- (a) in subsection (3), for “a Primary Care Trust or Special Health Authority” substitute “the Board”, and
- (b) in subsection (4)(a), omit sub-paragraph (i).
- 93 In section 177 (exemptions from dental charging), in subsection (4), omit paragraph (a). 30
- 94 (1) Section 180 (payments in respect of costs of optical appliances) is amended as follows.
- (2) In subsection (1), for “him or a relevant body” substitute “the Board”.
- (3) In subsection (3), in paragraph (a) – 35
- (a) for “himself or such relevant body as may be prescribed” substitute “the Board”, and
- (b) for “he or the prescribed body” substitute “the Board”.
- (4) In paragraph (b) of that subsection –
- (a) for “him or such relevant body as may be prescribed” substitute “the Board”, and 40
- (b) for “him or by the prescribed body” substitute “the Board”.

- (5) After subsection (6) insert –
- “(6A) The Board may direct a Special Health Authority, or such other body as may be prescribed, to exercise any of the Board’s functions under regulations under this section.”
- (6) Omit subsection (10). 5
- (7) In subsection (11), at the end insert “in accordance with the regulations”.
- (8) Omit subsection (12).
- (9) For the title to section 180 substitute “Payments in respect of costs of optical appliances and sight tests”.
- 95 (1) Section 181 (provision supplementary to section 180) is amended as follows. 10
- (2) In subsection (3), omit the words from “(whether” to the end.
- (3) Omit subsection (9).
- 96 (1) Section 183 (payment of travelling expenses) is amended as follows.
- (2) In paragraph (a) –
- (a) after “the Secretary of State” insert “, the Board, a commissioning consortium,” and
- (b) omit “a Primary Care Trust,”. 15
- (3) In paragraph (b) –
- (a) after “by” insert “the Board,”,
- (b) omit “a Primary Care Trust”, and 20
- (c) before the first “to” insert “or a commissioning consortium”, and
- (d) omit the words from “and” to “Trust,”.
- (4) In paragraph (c) –
- (a) after “by” insert “the Board,”,
- (b) omit “a Primary Care Trust”, and 25
- (c) before the first “to” insert “or a commissioning consortium”.
- 97 In section 185 (charges for more expensive supplies), in subsection (2) –
- (a) after “the Secretary of State,” insert “the Board, a commissioning consortium, a local authority,”, and
- (b) omit “a Primary Care Trust,”. 30
- 98 In section 186 (charges for repairs and replacements in certain cases), in subsection (2) –
- (a) after “the Secretary of State,” insert “the Board, a commissioning consortium, a local authority,” and
- (b) omit “a Primary Care Trust,”. 35
- 99 In section 187 (charges for designated services or facilities) for the words from “designated” to the end substitute “of a kind mentioned in section 3(1)(d) or (e) (whether provided in pursuance of those provisions or any other provision of this Act)”.
- 100 In section 188 (sums otherwise payable to those providing services), in subsection (2) – 40

-
- (a) after the first “by” insert “the Board or a commissioning consortium,”, and
- (b) omit “a Primary Care Trust”.
- 101 In section 189 (hospital accommodation on part payment), in subsection (1)(a) after “accommodation” insert “provided or managed under or by virtue of section 2A or Schedule 1”. 5
- PART 9
- FRAUD ETC.
- 102 (1) Section 195 (compulsory disclosure of documents) is amended as follows.
- (2) In subsection (2) for “section 2(1)(b)” substitute “section 2”. 10
- (3) In subsection (3) –
- (a) for “section 2(1)(b)” substitute “section 2”,
- (b) in paragraph (a) after “Secretary of State” insert “, a local authority”,
- (c) in paragraph (c) for “NHS contractors” substitute “health service contractors”, 15
- (d) in paragraph (d) after “Secretary of State” insert “, a local authority”,
- (e) in paragraph (f) after “Secretary of State” insert “, a local authority”,
- (f) for “NHS services” (in each place where it occurs) substitute “health services”, and
- (g) for “NHS contractor” (in each place where it occurs) substitute “health service contractor”. 20
- 103 (1) Section 196 (persons and bodies about which provision is made by Part 10) is amended as follows.
- (2) In subsection (3) –
- (a) before paragraph (a) insert – 25
- “(za) the Board,
- (zb) a commissioning consortium,”
- (b) omit paragraph (a), and
- (c) omit paragraph (c).
- (3) In subsection (5) – 30
- (a) for “An “NHS contractor”” substitute “A “health service contractor””, and
- (b) after “an NHS body” insert “or a local authority”.
- 104 (1) Section 197 (notice requiring production of documents) is amended as follows. 35
- (2) In subsection (1)(a) for “NHS contractor” substitute “health service contractor”.
- (3) In subsection (3)(d) for “NHS contractor” substitute “health service contractor”.
- 105 (1) Section 210 (interpretation of Part 10) is amended as follows. 40
- (2) In subsection (1) for ““NHS contractor”” substitute ““health service contractor””.

- (3) In subsection (2)(a) –
 - (a) after “in relation to” insert “a local authority,”, and
 - (b) for “NHS contractors” substitute “health service contractors”.

PART 10

PROPERTY AND FINANCE

- | | | |
|-----|--|----|
| | | 5 |
| 106 | In section 213 (transfers of trust property), in subsection (2)(c) – <ul style="list-style-type: none">(a) after “for” insert “the Board or a commissioning consortium,”, and(b) omit “a Primary Care Trust.” | |
| 107 | (1) Section 214 (transfer of functions and property to or from special trustees) is amended as follows. | 10 |
| | (2) In subsection (1) – <ul style="list-style-type: none">(a) after the first “by” insert “the Board, a commissioning consortium,”, and(b) omit “a Primary Care trust.”. | |
| | (3) In subsection (3)(a) – <ul style="list-style-type: none">(a) after “for” insert “the Board or a commissioning consortium,”, and(b) omit “a Primary Care Trust.”. | 15 |
| 108 | (1) Section 215 (trustees and property under section 222) is amended as follows. | |
| | (2) Omit subsection (2)(b) and the preceding “and”. | |
| | (3) In subsection (3) – | 20 |
| | (a) before paragraph (a) insert – <ul style="list-style-type: none">“(za) on trust for any purposes of the Board for which trustees have been appointed under paragraph 11 of Schedule A1,(zb) on trust for any purposes of the commissioning consortium for which trustees have been appointed.”, | 25 |
| | (b) omit paragraph (a). | |
| | (4) In subsection (4) – <ul style="list-style-type: none">(a) after the second “and” insert “the Board, the commissioning consortium,”,(b) omit “the Primary Care Trust,” (in each place it occurs), and(c) after the second “by” insert “the Board, the consortium,”. | 30 |
| 109 | In section 217 (trusts: supplementary provisions), in subsection (1) – <ul style="list-style-type: none">(a) omit paragraph (f), and(b) omit paragraph (g). | 35 |
| 110 | In section 218 (private trusts for hospitals), in subsection (4) – <ul style="list-style-type: none">(a) in paragraph (b) omit “or Primary Care Trust”,(b) in paragraph (c) omit “or Primary Care Trust” (in both places where it occurs), and(c) in paragraph (d) for “Strategic Health Authority” substitute “Secretary of State, or the”. | 40 |

-
- 111 (1) Section 222 (power to raise money) is amended as follows.
- (2) In subsection (3) for “the Secretary of State” substitute “the appropriate authority”.
- (3) After subsection (3) insert –
- “(3A) In subsection (3) “appropriate authority” means –
- (a) in relation to a commissioning consortium, the Board, and
- (b) in relation to any other body to which this section applies, the Secretary of State.”
- 112 (1) In section 223 (formation of companies), in each of subsections (1), (2) and (5) after “Secretary of State” insert “or the Board”.
- (2) After that section insert –
- “223A Application of section 223 to commissioning consortia**
- (1) Section 223 applies in relation to a commissioning consortium as it applies in relation to the Board.
- (2) But the powers conferred by that section are exercisable by a commissioning consortium only for the purpose of securing improvement –
- (a) in the physical and mental health of the people for whom it has responsibility for the purposes of section 3, or
- (b) in the prevention, diagnosis and treatment of illness in such people.”
- 113 Omit section 224 (means of meeting expenditure of strategic health authorities).
- 114 (1) Section 226 (financial duties of Strategic Health Authorities and Special Health Authorities) is amended as follows.
- (2) Omit subsection (1).
- (3) In subsection (3) –
- (a) omit “Strategic Health Authority or”, and
- (b) for “subsection (1) or (2)” substitute “subsection (2)”.
- (4) In subsection (4) omit “Strategic Health Authority or” (in each place where it occurs).
- (5) In subsection (5) omit “Strategic Health Authority or”.
- (6) In subsection (6) omit “Strategic Health Authority or”.
- (7) In subsection (7) –
- (a) in paragraph (a) omit “specified Strategic Health Authority or”,
- (b) omit paragraph (b)(i) and the word “or” immediately following it, and
- (c) omit paragraph (c)(i) and the word “or” immediately following it, and
- (d) in the words following paragraph (c) omit “Strategic Health Authority or”.

- 115 (1) Section 227 (resource limits for Strategic Health Authorities and Special Health Authorities) is amended as follows.
- (2) In subsection (1), omit “Strategic Health Authority and each”.
- (3) In subsection (2)(b) omit “Strategic Health Authority or”.
- (4) In subsection (3) omit “Strategic Health Authority or”. 5
- (5) In subsection (4) for “subsections (1) and (2)” substitute “subsection (2)”.
- 116 Omit sections 228 to 231 (funding of Primary Care Trusts etc).
- 117 (1) Section 236 (payment for medical examination before application for admission to hospital under the Mental Health Act) is amended as follows.
- (2) In subsection (1), for “the Secretary of State” substitute “the prescribed commissioning consortium”. 10
- (3) In subsection (2)(b) –
- (a) after “report made” insert “ –
- (i) ”,
- (b) omit “a Primary Care Trust,” 15
- (c) before “NHS trust” insert “an”, and
- (d) at the end insert “, or
- (ii) pursuant to arrangements made by the National Health Service Commissioning Board or a commissioning consortium.” 20
- 118 Omit Schedule 14 (further provision about expenditure of Primary Care Trusts).
- 119 (1) Schedule 15 (accounts and audits) is amended as follows.
- (2) In paragraph 1(1) –
- (a) omit paragraph (a), 25
- (b) omit paragraph (c), and
- (c) omit paragraph (g).
- (3) In paragraph 5, omit sub-paragraph (2).
- (4) Omit paragraph 7.
- (5) In paragraph 8(3) omit “or 7”. 30
- (6) Omit paragraph 9.

PART 11

PUBLIC INVOLVEMENT AND SCRUTINY

- 120 Omit sections 242A and 242B (duties of special health authorities in relation to involvement of users). 35
- 121 In section 246 (overview and scrutiny committees: exempt information), in subsection (3)(a), omit “, or under regulations under section 12A(4),”.

PART 12

MISCELLANEOUS

- 122 (1) Section 256 (power of Primary Care Trusts to make payments towards expenditure on community services) is amended as follows.
- (2) In subsection (1) for “A Primary Care Trust” substitute “The Board or a commissioning consortium”.
- (3) In subsection (3) –
- (a) for “A Primary Care Trust” substitute “The Board or a commissioning consortium”, and
- (b) for “the Primary Care Trust” substitute “the Board or (as the case may be) the consortium”.
- 123 In section 257 (payments in respect of voluntary organisations under section 256), in subsection (2) for “the Primary Care Trust” substitute “the Board or the consortium”.
- 124 In section 258 (university clinical teaching and research), in subsection (2)(a) –
- (a) after “by” insert “the Board, a commissioning consortium,”,
- (b) omit “a Strategic Health Authority,”, and
- (c) omit “Primary Care Trust,”.
- 125 (1) Section 259 (sale of medical practices) is amended as follows.
- (2) In subsection (4), in paragraph (e), for “section 83(2)(b)” substitute “section 83(2)”.
- (3) After that subsection insert –
- “(4A) The reference in subsection (4)(e) to arrangements under section 83(2) of this Act includes a reference to arrangements made under section 83(2)(b) of this Act before the commencement of paragraph 19 of Schedule 4 to the Health and Social Care Act 2011 (sub-paragraph (2) of which replaces section 83(2)).”
- (4) In subsection (5), in the definition of “relevant area” –
- (a) after ““relevant area”,” insert “ –
- (a) ”, and
- (b) at the end insert “;
- (b) in relation to the Board, in a case where a person has at any time provided or performed services by arrangement or contract with the Board, means the prescribed area (at the prescribed time).”
- 126 Omit section 268 (persons displaced by health service development), and the cross-heading which precedes it.
- 127 (1) Section 270 (provision of information by Registrar General) is amended as follows.
- (2) In subsection (1) after “Secretary of State” insert “, the Board, a commissioning consortium or a local authority”.

- (3) In subsection (2) –
- (a) for “the Secretary of State” substitute “the person to whom the information is provided”, and
 - (b) for “his functions” substitute “its functions”.
- 128 In section 273 (further provision about orders and directions), in subsection (3) after “Strategic Health Authority” insert “or the Board”. 5
- 129 (1) Section 275(1) (interpretation) is amended as follows.
- (2) Before the definition of “dental practitioner” insert –
- ““the Board” means the National Health Service Commissioning Board,
 - “commissioning consortium” means a commissioning consortium established under section 14D of this Act,”.
- 10
- (3) After the definition of “modifications” insert –
- ““NHS body” means –
 - (a) the Board,
 - (b) a commissioning consortium,
 - (c) a Special Health Authority,
 - (d) an NHS trust,
 - (e) an NHS foundation trust, and
 - (f) a Local Health Board.”
- 15
- (4) Until the commencement of section 29, the definition of “NHS body” in section 275 of the National Health Service Act 2006 has effect as if it included a reference to a Primary Care Trust. 20

SCHEDULE 5

Section 45(2)

PART 1: AMENDMENTS OF OTHER ENACTMENTS

25

National Assistance Act 1948 (c. 29)

- 1 (1) Section 24 of the National Assistance Act 1948 (local authority’s liability for provision of accommodation) is amended as follows.
- (2) In subsection (6A), in paragraph (b), omit “Primary Care Trust or”.
- (3) Omit subsection (6B). 30
- (4) In consequence of the repeal made by sub-paragraph (3), omit paragraph 1 of Schedule 1 to the Health Act 2009.

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

- 2 (1) Section 63 of the Health Services and Public Health Act 1968 (provision of instruction for officers of hospital authorities etc.) is amended as follows. 35
- (2) In subsection (1) –
- (a) after “servants of” insert “the National Health Service Commissioning Board or a commissioning consortium,”,
 - (b) omit “a Strategic Health Authority,”, and

	(c) omit “, Primary Care Trust”.	
(3)	In subsection (2) –	
	(a) in paragraph (a) before “or the council” insert “, the National Health Service Commissioning Board, a commissioning consortium”, and	
	(b) in paragraph (b) for “a Primary Care Trust” substitute “the National Health Service Commissioning Board”.	5
(4)	In subsection (5A) –	
	(a) omit “Strategic Health Authority” (in each place where it occurs), and	
	(b) omit “, Primary Care Trust” (in each place where it occurs).	10
(5)	In subsection (5B) –	
	(a) omit paragraph (za), and	
	(b) omit paragraph (bb).	
<i>Mental Health Act 1983 (c. 20)</i>		
3	The Mental Health Act 1983 is amended as follows.	15
4	In section 19 (regulations as to transfers of patients), in subsection (3) –	
	(a) for “NHS foundation trust,”, in each place it appears, substitute “NHS foundation trust or”, and	
	(b) omit “or Primary Care Trust” in each place it appears.	
5	In section 23 (discharge of patients), in subsection (5)(a) –	20
	(a) for “, Special Health Authority”, in each place it appears, substitute “or Special Health Authority”,	
	(b) omit “or Primary Care Trust” in each place it appears, and	
	(c) omit “, trust” in each place it appears.	
6	In section 32 (regulations for purposes of Part 2 of that Act), in subsection (3), omit “, Primary Care Trusts”.	25
7	(1) Section 39 (power of court to request information from hospitals) is amended as follows.	
	(2) In subsection (1) –	
	(a) omit “Primary Care Trust or” in each place it appears,	30
	(b) in paragraph (a), after the first “the” insert “commissioning consortium or”,	
	(c) in paragraph (b), at the beginning insert “the National Health Service Commissioning Board or”,	
	(d) in that paragraph, after “or any other” insert “commissioning consortium or”,	35
	(e) after “such information as that” insert “commissioning consortium or”,	
	(f) after “Local Health Board or”, in each place it appears, insert “the National Health Service Commissioning Board or the”,	40
	(g) after “order, and that” insert “commissioning consortium or”.	

- (3) After subsection (1) insert –
- “(1ZA) A request under this section to the National Health Service Commissioning Board may relate only to services or facilities the provision of which the Board arranges.”
- (4) In consequence of the repeals made by sub-paragraph (2), omit paragraphs 46 and 49 of Schedule 2 to the National Health Service Reform and Health Care Professions Act 2002. 5
- 8 In section 134 (patients’ correspondence), in subsection (3)(e) –
- (a) at the beginning insert “the National Health Service Commissioning Board, a commissioning consortium,” 10
- (b) omit “Strategic Health Authority,”
- (c) for “, Special Health Authority” substitute “or Special Health Authority”, and
- (d) omit “or Primary Care Trust”.
- 9 In section 139 (protection for acts done in pursuance of that Act), in subsection (4) – 15
- (a) after “the Secretary of State or against” insert “the National Health Service Commissioning Board, a commissioning consortium,”
- (b) omit “Strategic Health Authority,”
- (c) for “, Special Health Authority” substitute “or Special Health Authority”, and 20
- (d) omit “or Primary Care Trust”.
- 10 (1) In section 145 (interpretation), in subsection (1) –
- (a) in the definition of “the managers”, in paragraph (a) – 25
- (i) omit “Primary Care Trust,”, and
- (ii) omit “Strategic Health Authority,”
- (b) in paragraph (bb) of that definition, omit “a Primary Care Trust or”,
- (c) omit the definition of “Primary Care Trust”, and
- (d) omit the definition of “Strategic Health Authority”.
- (2) In consequence of the repeals made by sub-paragraph (1), omit paragraph 70(e) and (g) of Schedule 1 to the National Health Service (Consequential Provisions) Act 2006. 30

Dentists Act 1984 (c. 24)

- 11 In section 40 of the Dentists Act 1984 (definition of “business of dentistry”), in subsection (2)(aa), after “section 100 of that Act” insert “or an agreement under section 107 of that Act”. 35

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

- 12 The Disabled Persons (Services, Consultation and Representation) Act 1986 is amended as follows.
- 13 In section 7 (persons discharged from hospital), in subsection (9) in the definition of “health authority”, in paragraph (a) for “a Primary Care Trust” substitute “a commissioning consortium”. 40
- 14 In section 11 (reports to Parliament), omit subsection (1ZB).

Children Act 1989 (c. 41)

- 15 The Children Act 1989 is amended as follows.
- 16 In section 27 (co-operation between authorities), in subsection (3) –
- (a) after paragraph (c) insert –
 - “(ca) the National Health Service Commissioning Board;”, 5
 - and
 - (b) in paragraph (d) –
 - (i) after “any” insert “commissioning consortium,” and
 - (ii) omit “, Primary Care Trust”.
- 17 In section 47 (local authority’s duty to investigate), in subsection (11) – 10
- (a) after paragraph (c) insert –
 - “(ca) the National Health Service Commissioning Board;”,
 - and
 - (b) in paragraph (d) –
 - (i) after “any” insert “commissioning consortium,” and 15
 - (ii) omit “, Primary Care Trust”.

Health Service Commissioners Act 1993 (c. 46)

- 18 In section 19 of the Health Service Commissioners Act 1993 (interpretation), in the definition of “direct payment services”, omit “, or under regulations under section 12A(4),”. 20

Employment Rights Act 1996 (c. 18)

- 19 The Employment Rights Act 1996 is amended as follows.
- 20 In section 43K (extension of meaning of “worker” etc for Part IVA) –
- (a) in subsection (1)(ba) for “a Primary Care Trust” (in each place where it occurs) substitute “the National Health Service Commissioning Board”, 25
 - (b) in subsection (1)(c)(i) for “a Primary Care Trust” substitute “the National Health Service Commissioning Board”,
 - (c) in subsection (2)(aa) for “the Primary Care Trust or” substitute “the National Health Service Commissioning Board, or the”. 30
- 21 In section 50 (right to time off for public duties), in subsection (8) –
- (a) before paragraph (a) insert –
 - “(za) the National Health Service Commissioning Board,
 - (zb) a commissioning consortium,” and
 - (b) in paragraph (b) – 35
 - (i) omit “a Strategic Health Authority established under section 13 of the National Health Service Act 2006,” and
 - (ii) omit “or a Primary Care Trust established under section 18 of the National Health Service Act 2006,”.
- 22 In section 218 (change of employer), in subsection (10) – 40
- (a) before paragraph (a) insert –
 - “(za) the National Health Service Commissioning Board,
 - (zb) a commissioning consortium,”

- (b) omit paragraph (a),
- (c) in paragraph (b) for “that Act” substitute “the National Health Service Act 2006”,
- (d) omit paragraph (bb), and
- (e) in paragraph (c) for “that Act” substitute “the National Health Service Act 2006”. 5

Education Act 1996 (c. 56)

- 23 The Education Act 1996 is amended as follows.
- 24 (1) Section 332 (duty of certain NHS bodies to notify parent) is amended as follows. 10
- (2) In subsection (1) –
 - (a) after “where” insert “a commissioning consortium,” and
 - (b) omit “a Primary Care Trust,”.
 - (3) In subsection (2) for “trust” (in each place where it occurs) substitute “other body”. 15
 - (4) In subsection (3) for “trust” substitute “other body”.
- 25 In section 579 (general interpretation), in subsection (1) in the definition of “school buildings” in paragraph (c) for the words from “for enabling” to “functions” substitute “for the carrying out of functions”.

Crime and Disorder Act 1998 (c. 37) 20

- 26 The Crime and Disorder Act 1998 is amended as follows.
- 27 In section 38 (local provision of youth justice services), in subsection (2)(b) –
 - (a) after “local probation board” insert “, commissioning consortium or”, and
 - (b) omit “, Strategic Health Authority,”, and 25
 - (c) omit “or Primary Care Trust”.
- 28 In section 39 (local provision of youth justice services), in subsection (3)(b) –
 - (a) after “local probation board” insert “, commissioning consortium or”, and
 - (b) omit “, Strategic Health Authority,”, and 30
 - (c) omit “or Primary Care Trust”.
- 29 In that section, in subsection (5)(d) –
 - (a) after “nominated by” insert “a commissioning consortium or”, and
 - (b) omit “a Primary Care Trust or”.
- 30 In section 41 (the Youth Justice Board), in subsection (10) – 35
 - (a) after “provider of probation services,” insert “a commissioning consortium,”, and
 - (b) for “, a Strategic Health Authority,” substitute “and”, and
 - (c) omit “and a Primary Care Trust”.
- 31 In section 42 (supplementary provisions), in subsection (3) – 40
 - (a) after “provider of probation services,” insert “a commissioning consortium,”, and

- (b) for “, a Strategic Health Authority,” substitute “or”, and
- (c) omit “or a Primary Care Trust”.

Freedom of Information Act 2000 (c. 36)

- 32 In Part 3 of Schedule 1 to the Freedom of Information Act 2000 (the National Health Service), before paragraph 36A insert – 5
- “36ZA The National Health Service Commissioning Board.
- 36ZB A commissioning consortium established under section 14D of the National Health Service Act 2006.”

International Development Act 2002 (c. 1)

- 33 In Schedule 1 to the International Development Act 2002 (Statutory bodies to which section 9 applies) – 10
- (a) before the entry for a Health Board insert –
“The National Health Service Commissioning Board”,
 - (b) omit the entry for a Primary Care Trust, and
 - (c) omit the entry for a Strategic Health Authority. 15

Scottish Public Services Ombudsman Act 2002 (asp 11)

- 34 (1) The Scottish Public Services Ombudsman Act 2002 is amended as follows.
- (2) In section 7 (matters which may be investigated: restrictions), omit subsection (6A).
- (3) In Schedule 2 (persons liable to investigation), omit paragraph 90. 20

Community Care (Delayed Discharges etc.) Act 2003 (c. 5)

- 35 The Community Care (Delayed Discharges etc.) Act 2003 is amended as follows.
- 36 In section 1 (meaning of “NHS body” and “qualifying hospital patient”) in subsection (1), in the definition of “NHS body” in paragraph (b) omit “a Primary Care Trust (in England) or”. 25
- 37 In section 9 (dispute resolution) –
- (a) in subsection (1) omit “by Strategic Health Authorities in England and”,
 - (b) at the end of that subsection insert “in relation to Wales”, 30
 - (c) in subsection (2) omit –
 - (i) “Strategic Health Authority or”, and
 - (ii) “Authority or”,
 - (d) in subsection (3) –
 - (i) for “the appropriate Minister” substitute “the Assembly”, 35
 - (ii) omit “a Strategic Health Authority or”, and
 - (iii) omit “Authority or”, and
 - (e) in subsection (4)(a) omit “Strategic Health Authority or”.

Licensing Act 2003 (c. 17)

- 38 In section 16 of the Licensing Act 2003 (applicant for premises licence), in subsection (3), in the definition of “health service body” omit paragraph (b).

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

- 39 In section 45 of the Health and Social Care (Community Health and Standards) Act 2003 (quality in health care), in subsection (4), omit “, or under regulations under section 12A(4),”.

Criminal Justice Act 2003 (c. 44)

- 40 In section 325 of the Criminal Justice Act 2003 (arrangements for assessing etc risks posed by certain offenders) – 10
- (a) after subsection (6)(d) insert –
- “(da) every local authority (in its capacity as a person exercising functions for the purposes of the health service) any part of whose area falls within the relevant area,” 15
- (b) in subsection (6)(f) omit “or Strategic Health Authority”,
- (c) in subsection (6)(g) –
- (i) after “every” insert “commissioning consortium or”, and
- (ii) omit “Primary Care Trust or”.

Carers (Equal Opportunities) Act 2004 (c. 15) 20

- 41 (1) Section 3 of the Carers (Equal Opportunities) Act 2004 (co-operation between authorities) is amended as follows.
- (2) In subsection (2)(b) after “by” (in the second place it occurs) insert “or in pursuance of arrangements made by”.
- (3) In subsection (3) after “provide” insert “or arrange for the provision of”. 25
- (4) In subsection (5) –
- (a) omit the “and” at the end of paragraph (c) and insert –
- “(ca) the National Health Service Commissioning Board, and”, and
- (b) in paragraph (d) – 30
- (i) after “any” insert “commissioning consortium,”, and
- (ii) omit “Primary Care Trust”.

Domestic Violence, Crime and Victims Act 2004 (c. 28)

- 42 In section 9 of the Domestic Violence, Crime and Victims Act 2004 (establishment and conduct of domestic homicide reviews), in the list in subsection (4)(a) – 35
- (a) after the entry for local probation boards insert –
- “the National Health Service Commissioning Board; commissioning consortia established under section 14D of the National Health Service Act 2006;”, 40
- (b) omit the entry for Strategic Health Authorities, and

- (c) omit the entry for Primary Care Trusts.

Children Act 2004 (c. 31)

- 43 The Children Act 2004 is amended as follows.
- 44 In section 10 (co-operation to improve wellbeing), in subsection (4) –
- (a) after paragraph (d) insert – 5
“(da) the National Health Service Commissioning Board;
- (b) after paragraph (da) (as inserted by paragraph (a) above) insert –
“(db) any commissioning consortium for an area any part
of which falls within the area of the authority;”, and
- (c) omit paragraph (e). 10
- 45 In section 11 (arrangements to safeguard and promote welfare), in
subsection (1) –
- (a) after paragraph (b) insert –
“(ba) the National Health Service Commissioning Board;”
- (b) after paragraph (ba) (as inserted by paragraph (a) above) insert – 15
“(bb) a commissioning consortium;”,
- (c) omit paragraph (c), and
- (d) omit paragraph (e).
- 46 In section 13 (establishment of Local Safeguarding Children Boards), in
subsection (3) – 20
- (a) after paragraph (d) insert –
“(da) the National Health Service Commissioning Board;”,
- (b) after paragraph (da) insert –
“(db) any commissioning consortium for an area any part
of which falls within the area of the authority;”, and 25
- (c) omit paragraph (e).

Mental Capacity Act 2005 (c. 9)

- 47 The Mental Capacity Act 2005 is amended as follows.
- 48 In section 35 (appointment of independent mental capacity advocates) –
- (a) in subsection (1), for “appropriate authority” substitute “responsible
authority”, 30
- (b) in subsection (4), for “appropriate authority” substitute “responsible
authority”, and
- (c) after subsection (6) insert –
- “(6A) In subsections (1) and (4), “the responsible authority” 35
means –
- (a) in relation to the provision of the services of
independent mental capacity advocates in the area of
a local authority in England, that local authority, and
- (b) in relation to the provision of the services of 40
independent mental capacity advocates in Wales, the
Welsh Ministers.

- (6B) In subsection (6A)(a), “local authority” has the meaning given in section 64(1) except that it does not include the council of a county or county borough in Wales.”
- 49 In section 64 (interpretation), in subsection (1) in the definition of “local authority”, after “except in” insert “section 35(6A)(a) and”. 5
- 50 (1) Schedule A1 (hospital and care home residents: deprivation of liberty) is amended as follows.
- (2) In paragraph 176 (meaning of “managing authority”), in sub-paragraph (1)–
- (a) in paragraph (a) omit “Primary Care Trust,”, 10
- (b) in that paragraph omit “Strategic Health Authority,”, and
- (c) in paragraph (b) omit “Primary Care Trust,”.
- (3) In paragraph 180 (supervisory bodies: hospitals in England)–
- (a) for sub-paragraph (2) substitute–
- “(2) If the relevant person is ordinarily resident in the area of a local authority in England, the supervisory body are that local authority.” 15
- (b) in sub-paragraph (3), after “If” insert “the relevant person is not ordinarily resident in England and”,
- (c) in sub-paragraph (4), for “the Primary Care Trust” substitute “the local authority”, 20
- (d) after sub-paragraph (4) insert–
- “(4A) “Local authority” means –
- (a) the council of a county;
- (b) the council of a district for which there is no county council; 25
- (c) the council of a London borough;
- (d) the Common Council of the City of London;
- (e) the Council of the Isles of Scilly.”, and
- (e) in sub-paragraph (5), for “Primary Care Trusts” substitute “local authorities”. 30
- (4) In paragraph 181 (supervisory bodies: hospitals in Wales), for sub-paragraph (3) substitute–
- “(3) But if the relevant person is ordinarily resident in the area of a local authority in England, the supervisory body are that local authority. 35
- (4) “Local authority” means –
- (a) the council of a county;
- (b) the council of a district for which there is no county council; 40
- (c) the council of a London borough;
- (d) the Common Council of the City of London;
- (e) the Council of the Isles of Scilly.”

(5) Before paragraph 183 insert the following heading –

“Supervisory bodies: determination of place of ordinary residence”.

(6) In that paragraph –

- (a) in sub-paragraph (1), for “paragraph” substitute “paragraphs 180, 181 and”, and
- (b) in sub-paragraph (2), after “by virtue of sub-paragraph (1)” insert “to any determination of where a person is ordinarily resident for the purposes of paragraph 182”.

5

Childcare Act 2006 (c. 21)

51 In section 4 of the Childcare Act 2006 (duty of local authority and relevant partners to work together), in subsection (1) – 10

- (a) before paragraph (a) insert –
 - “(za) the National Health Service Commissioning Board;”,
 - and
- (b) in paragraph (a) – 15
 - (i) at the beginning insert “a commissioning consortium”,
 - (ii) omit “a Strategic Health Authority”, and
 - (iii) omit “or Primary Care Trust”.

Safeguarding Vulnerable Groups Act 2006 (c. 47)

52 The Safeguarding Vulnerable Groups Act 2006 is amended as follows. 20

53 In section 6 (regulated activity providers), in subsection (8D), omit “12A(4) or”.

54 In section 17 (NHS employment) in subsection (3) –

- (a) before paragraph (a) insert – 25
 - “(za) the National Health Service Commissioning Board;”,
 - (zb) a commissioning consortium;”,
- (b) omit paragraph (b), and
- (c) omit paragraph (f).

55 (1) Section 21 (controlled activity relating to children) is amended as follows.

(2) In subsection (5)(a), omit “, or regulations under section 12A(4),”. 30

(3) In subsection (8)(aa), omit “, or under regulations under section 12A(4),”.

56 In section 59 (vulnerable adults), in subsection (1)(ia), omit “, or under regulations under section 12A(4),”.

Corporate Manslaughter and Corporate Homicide Act 2007 (c. 19)

57 In section 6 of the Corporate Manslaughter and Corporate Homicide Act 2007 (emergencies), in subsection (7) in the definition of “relevant NHS body” – 35

- (a) before paragraph (a) insert –
 - “(za) the National Health Service Commissioning Board;”,
 - and

40

- (b) in paragraph (a) –
 - (i) at the beginning insert “a commissioning consortium,”
 - (ii) omit “a Strategic Health Authority,” and
 - (iii) omit “Primary Care Trust,”.

Health and Social Care Act 2008 (c. 14)

5

58 The Health and Social Care Act 2008 is amended as follows.

59 In section 30 (urgent procedure for cancellation), in subsection (3) –

- (a) before paragraph (a) insert –
 - “(za) to the National Health Service Commissioning Board,”
- (b) in paragraph (a) –
 - (i) after “such” insert “commissioning consortium”, and
 - (ii) omit “Primary Care Trust”, and
- (c) omit paragraph (b).

10

60 In section 39 (bodies required to be notified of certain matters), in subsection (1) –

15

- (a) before paragraph (a) insert –
 - “(za) to the National Health Service Commissioning Board,”
- (b) in paragraph (a) –
 - (i) after “such” insert “commissioning consortium”, and
 - (ii) omit “Primary Care Trust”, and
- (c) omit paragraph (b).

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61 In section 46 (reviews and investigations) –

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- (a) omit subsection (1),
- (b) omit subsection (2), and
- (c) in subsections (4) and (6)(a), for “a body’s” substitute “a local authority’s”.

62 In section 48 (special reviews and investigations), in subsection (8) omit paragraph (a) and the word “or” immediately following it.

30

63 In section 49 (power to extend periodic review function), in subsection (3) –

- (a) omit “a Primary Care Trust,” and
- (b) omit “another English NHS provider or”.

64 In section 54 (studies as to economy, efficiency etc) –

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- (a) omit subsection (2)(b), and
- (b) in subsection (5) after “reference to” insert “the National Health Service Commissioning Board, a commissioning consortium or”.

65 In section 59 (additional functions) at the end insert –

- “(3) The references in subsection (1) to English NHS bodies do not include references to the National Health Service Commissioning Board or commissioning consortia.”

40

66 In section 64 (power to require documents and information), in subsection (2)(b) –

- (a) after “commissioned by” insert “–
 (i) the National Health Service Commissioning Board,
 (ii) a commissioning consortium, or
 (iii) ”, and 5
 (b) omit “a Primary Care Trust”.
- 67 In section 70 (co-operation between the Care Quality Commission and the Independent Regulator of NHS foundation trusts, in subsection (3)(a) omit “section 46 or”.
- 68 In section 72 (provision of material to the Comptroller and Auditor General) – 10
 (a) omit paragraph (a), and
 (b) in paragraph (b), for “such a body” substitute “an English NHS body”.
- 69 (1) Section 97 (general interpretation of Part 1) is amended as follows. 15
 (2) In subsection (1) in the definition of “English NHS body” –
 (a) omit paragraph (a),
 (b) omit paragraph (b), and
 (c) before paragraph (d) insert – 20
 “(ca) the National Health Service Commissioning Board,
 (cb) a commissioning consortium,”.
- (3) In that subsection in the definition of “English NHS provider” omit paragraph (a).
- (4) In that subsection in the definition of “NHS care” – 25
 (a) after “health care” insert “–
 (a) commissioned by the National Health Service Commissioning Board or by a commissioning consortium (whether from an English NHS provider or not), or 30
 (b) ”, and
 (b) omit from “provided by” to the end.
- (5) After subsection (2) insert –
 “(2A) Any reference in this Part to health care commissioned by the National Health Service Commissioning Board or by a commissioning consortium is a reference to health care provided by other persons pursuant to arrangements made by the Board or a consortium.” 35
- (6) Omit subsection (3).
- 70 In section 153 (directions to certain NHS bodies) in subsection (1) – 40
 (a) omit paragraph (a), and
 (b) omit paragraph (b).

Education and Skills Act 2008 (c. 25)

- 71 In section 16 of the Education and Skills Act 2008 (supply of information by public bodies), in subsection (2) –
- (a) omit paragraph (c),
 - (b) omit paragraph (d), and
 - (c) before paragraph (e) insert –
“(da) a commissioning consortium;”.
- 5

Autism Act 2009 (c. 15)

- 72 In section 4 of the Autism Act 2009 (interpretation), in subsection (1), in the definition of “NHS body” –
- (a) omit paragraph (a),
 - (b) omit paragraph (b), and
 - (c) before paragraph (d) insert –
“(ca) the National Health Service Commissioning Board;
 - (cb) a commissioning consortium;”.
- 10
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Local Democracy, Economic Development and Construction Act 2009 (c. 20)

- 73 In section 2 of the Local Democracy, Economic Development and Construction Act 2009 (democratic arrangements of connected authorities), in subsection (3) –
- (a) omit paragraph (l), and
 - (b) omit paragraph (m).
- 20

Health Act 2009 (c. 21)

- 74 The Health Act 2009 is amended as follows.
- 75 In section 2 (duty to have regard to NHS constitution), in subsection (2) –
- (a) omit paragraph (a),
 - (b) omit paragraph (b), and
 - (c) before paragraph (d) insert –
“(ca) the National Health Service Commissioning Board;
 - (cb) commissioning consortia;”.
- 25
30
- 76 In section 8 (duty of providers to publish information), omit subsection (2)(a).

Coroners and Justice Act 2009 (c. 25)

- 77 In section 19 of the Coroners and Justice Act 2009 (medical examiners) –
- (a) in subsection (1) for “Primary Care Trusts” substitute “Local authorities”,
 - (b) in subsection (2) for “Trust” (in each place where it occurs) substitute “local authority”, and
 - (c) in subsection (5) for “a Primary Care Trust” substitute “a local authority”.
- 35
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- 78 In section 20 of that Act (medical certificates of cause of death), in subsection (5) for “Primary Care Trust” substitute “local authority”.

Equality Act 2010 (c. 15)

- 79 In Part 1 of Schedule 19 to the Equality Act 2010 (bodies subject to public sector equality duty), in the group of entries that includes entries for bodies whose functions relate to the health service –
- (a) at the beginning insert –
“The National Health Service Commissioning Board.
A commissioning consortium established under section 14D of the National Health Service Act 2006.”, 10
 - (b) in the entry for an NHS trust, for “that Act” substitute “the National Health Service Act 2006”,
 - (c) omit the entry for a Primary Care Trust, and
 - (d) omit the entry for a Strategic Health Authority.

Child Poverty Act 2010 (c. 9) 15

- 80 In section 20 of the Child Poverty Act 2010 (partner authorities), in subsection (2) –
- (a) after paragraph (e) insert –
“(ea) a commissioning consortium;”,
 - (b) omit paragraph (f), and 20
 - (c) omit paragraph (g).

SCHEDULE 6

Section 45(3)

PART 1: TRANSITIONAL PROVISION

Interpretation

- 1 (1) This paragraph applies for the purposes of this Schedule. 25
- (2) “The initial period” means the period that –
- (a) begins with the commencement of section 21, and
 - (b) ends with the day specified by the Secretary of State for the purposes of section 14A of the 2006 Act (as inserted by section 21).
- (3) “An initial application” means an application under section 14B of that Act which is made during the initial period. 30
- (4) “The Board” means the National Health Service Commissioning Board.
- (5) “The 2006 Act” means the National Health Service Act 2006.

Exercise of Secretary of State’s functions in relation to Primary Care Trusts

- 2 (1) The Secretary of State may, at any time during the initial period, direct the Board to exercise any functions of the Secretary of State that – 35
- (a) relate to Primary Care Trusts, and
 - (b) are specified in the direction.

- (2) Sub-paragraph (1) does not apply to any power or duty of the Secretary of State to make an order or regulations.
- (3) Any rights acquired, or liabilities (including liabilities in tort) incurred, in respect of the exercise by the Board of any function exercisable by it by virtue of sub-paragraph (1) are enforceable by or against the Board (and no other person). 5

Conditional establishment of commissioning consortia

- 3 (1) Regulations may make provision authorising the Board to grant an initial application where the Board is not satisfied as to the matters mentioned in section 14C(2) of the 2006 Act. 10
- (2) In the following provisions of this paragraph, any reference to the grant of an initial application is a reference to the grant of such an application by virtue of the regulations.
- (3) The regulations may authorise the Board to impose conditions on the grant of an initial application. 15
- (4) The regulations may, in relation to a commissioning consortium established under section 14D of the 2006 Act on the grant of an initial application, authorise the Board –
 - (a) to direct the consortium not to exercise any functions specified in the direction; 20
 - (b) to give directions to the consortium about the exercise of any of its functions.
- (5) If the regulations authorise the Board to give a direction mentioned in sub-paragraph (4)(a), they may also authorise or require the Board to –
 - (a) exercise any functions specified in such a direction on behalf of the commissioning consortium; 25
 - (b) arrange for another commissioning consortium to exercise those functions on behalf of the consortium.
- (6) The 2006 Act applies in relation to a commissioning consortium established on the grant of an initial application with such modifications as may be specified in the regulations. 30
- (7) The regulations may, in particular, provide for the power in section 14Z6(7) of the 2006 Act to be exercisable by the Board where a commissioning consortium is failing or has failed to comply with any conditions imposed by virtue of the regulations. 35
- (8) The regulations may make provision requiring the Board to keep under review any conditions imposed or directions given by virtue of the regulations.
- (9) The regulations must make provision authorising the Board to vary or remove any conditions imposed, or to vary or revoke any directions given, by virtue of the regulations. 40
- (10) The regulations may make provision –
 - (a) as to factors which the Board must or may take into account in deciding how to exercise any power conferred on the Board by the regulations; 45

- (b) as to the procedure to be followed by the Board before exercising any such power.
- (11) Sub-paragraph (12) applies if all the conditions imposed and directions given in relation to a commissioning consortium are removed or (as the case may be) revoked. 5
- (12) In relation to any time after the day on which the consortium ceases to be subject to any conditions or directions, the consortium is to be deemed to have been established by virtue of an application granted under section 14C of the 2006 Act.
- Exercise of functions of consortia during initial period* 10
- 4 (1) This paragraph applies to a commissioning consortium if the application for its establishment is granted under section 14C of the 2006 Act during the initial period.
- (2) The Board may direct that, during that period, the commissioning consortium may only exercise such of its functions as are specified in the direction. 15
- Preparatory work by consortia during initial period*
- 5 (1) This paragraph applies to a commissioning consortium which is prevented by a direction given by virtue of paragraph 3 or 4 of this Schedule from exercising a function. 20
- (2) The giving of the direction does not prevent the consortium from doing anything that appears to it to be necessary or expedient for the purpose of preparing it to exercise that function.
- Arrangements between PCTs and consortia during initial period*
- 6 A Primary Care Trust may at any time during the initial period make arrangements with a commissioning consortium under which the consortium exercises any functions of the Primary Care Trust on its behalf. 25

SCHEDULE 7

Section 51

MONITOR

- Membership* 30
- 1 (1) Monitor is to consist of—
- (a) a chair appointed by the Secretary of State,
- (b) at least four other members so appointed, and
- (c) the chief executive and other members appointed in accordance with paragraph 2. 35
- (2) The number of executive members must be less than the number of non-executive members.

- (3) In this Schedule –
- (a) references to non-executive members of Monitor are references to the members appointed in accordance with sub-paragraph (1)(a) and (b), and
 - (b) references to executive members of Monitor are references to the other members. 5

The chief executive and other executive members: appointment and status

- 2 (1) The chief executive and the other executive members of Monitor are to be appointed by the non-executive members.
- (2) A person may not be appointed as chief executive or as another executive member without the consent of the Secretary of State. 10
- (3) The non-executive members may not appoint more than five executive members without the consent of the Secretary of State.
- (4) The chief executive and the other executive members are to be employees of Monitor. 15

Non-executive members: tenure

- 3 (1) A person holds and vacates office as a non-executive member of Monitor in accordance with that person’s terms of appointment.
- (2) A person may at any time resign from office as a non-executive member by giving notice the Secretary of State. 20
- (3) The Secretary of State may at any time remove a person from office as a non-executive member on any of the following grounds –
- (a) incapacity,
 - (b) misbehaviour, or
 - (c) failure to carry out his or her duties as a non-executive member. 25
- (4) The Secretary of State may suspend a person from office as a non-executive member if it appears to the Secretary of State that there are or may be grounds to remove the person from office under sub-paragraph (3).
- (5) A person may not be appointed as a non-executive member for a period of more than four years. 30
- (6) A person who ceases to be a non-executive member is eligible for re-appointment.

Suspension from office

- 4 (1) This paragraph applies where a person is suspended under paragraph 3(4).
- (2) The Secretary of State must give notice of the decision to the person; and the suspension takes effect on receipt by the person of the notice. 35
- (3) The notice may be –
- (a) delivered in person (in which case, the person is taken to receive 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 taken to receive it on the third day after the day on which it is posted).
- (4) The initial period of suspension must not exceed six months.
- (5) The Secretary of State may at any time review the suspension. 5
- (6) The Secretary of State –
- (a) must review the suspension if requested in writing by the person to do so, but
- (b) need not review the suspension less than three months after the beginning of the initial period of suspension. 10
- (7) Following a review during a period of suspension, the Secretary of State may –
- (a) revoke the suspension, or
- (b) suspend the person for another period of not more than six months from the expiry of the current period. 15
- (8) The Secretary of State must revoke the suspension if the Secretary of State –
- (a) decides that there are no grounds to remove the person from office under paragraph 3(3), or
- (b) decides that there are grounds to do so but does not remove the person from office under that provision. 20
- 5 (1) Where a person is suspended from office as the chair under paragraph 3(4), the Secretary of State may appoint a non-executive member as interim chair to exercise the chair’s functions.
- (2) Appointment as interim chair is for a term not exceeding the shorter of –
- (a) the period ending with either – 25
- (i) the appointment of a new chair, or
- (ii) the revocation or expiry of the existing chair’s suspension, and
- (b) the remainder of the interim chair’s term as a non-executive member.
- (3) A person who ceases to be the interim chair is eligible for re-appointment. 30

Payment of non-executive members

- 6 (1) Monitor must pay to its non-executive members such remuneration and allowances as the Secretary of State may determine.
- (2) Monitor must pay or make provision for the payment of such pensions, allowances or gratuities as it may, with the approval of the Secretary of State, determine to or in respect of any person who is or has been a non-executive member. 35
- (3) If a person ceases to be a non-executive member and the Secretary of State decides that there are exceptional circumstances which mean that the person should be compensated, Monitor must pay compensation to the person of such amount as the Secretary of State may determine. 40

Staff

- 7 (1) Monitor may appoint such persons to be employees of Monitor as it considers appropriate.
- (2) Employees of Monitor are to be paid such remuneration and allowances as Monitor may determine. 5
- (3) Employees of Monitor are to be appointed on such other terms and conditions as Monitor may determine.
- (4) Monitor may pay or make provision for the payment of such pensions, allowances or gratuities as it may determine to or in respect of any person who is or has been an employee of Monitor. 10
- (5) Before making a determination as to remuneration, pensions, allowances or gratuities for the purposes of sub-paragraph (2) or (4), Monitor must obtain the approval of the Secretary of State to its policy on that matter.

Superannuation

- 8 (1) Sub-paragraph (2) applies where a person who is an active or deferred member of a scheme under section 1 of the Superannuation Act 1972 is appointed as chair. 15
- (2) The Minister for the Civil Service may determine that the person's office as chair is to be treated for the purposes of the scheme as service in the employment by reference to which the person is a member (whether or not any benefits are payable by virtue of paragraph 6(2)). 20
- (3) Employment with Monitor is among the kinds of employment to which a scheme under section 1 of the Superannuation Act 1972 can apply; and, accordingly, in Schedule 1 to that Act (in which those kinds of employment are listed), at the end of the list of Other Bodies insert – 25
“Monitor”.
- (4) Monitor must pay to the Minister for the Civil Service, at such times as the Minister may direct, such sums as the Minister may determine in respect of any increase attributable to sub-paragraph (2) or (3) in the sums payable out of money provided by Parliament under the Superannuation Act 1972. 30

Committees

- 9 (1) Monitor may appoint such committees and sub-committees as it considers appropriate.
- (2) A committee or sub-committee may consist of or include persons who are not members or employees of Monitor. 35
- (3) Monitor may pay such remuneration and allowances as it determines to any person who –
(a) is a member of a committee or sub-committee, but
(b) is not an employee of Monitor,
whether or not that person is a non-executive member of Monitor. 40

Procedure

- 10 (1) Monitor may regulate its own procedure.
- (2) The validity of any act of Monitor is not affected by any vacancy among the members or by any defect in the appointment of a member.

Exercise of functions

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- 11 (1) Monitor must exercise its functions effectively, efficiently and economically.
- (2) Monitor may arrange for the exercise of its functions on its behalf by –
- (a) a non-executive member;
 - (b) an employee (including the chief executive);
 - (c) a committee or sub-committee.

10

Assistance

- 12 (1) Monitor may arrange for persons to assist it in the exercise of its functions in relation to –
- (a) a particular case, or
 - (b) cases of a particular description.
- (2) Such arrangements may include provision with respect to the payment of remuneration and allowances to, or amounts in respect of, such persons.

15

Borrowing

- 13 (1) Monitor may, with the consent of the Secretary of State, borrow money temporarily by way of overdraft.
- (2) But subject to that, and subject to sections 131 and 132 (power to borrow for exercising functions in relation to financial assistance and power of Secretary of State to lend etc.), Monitor may not borrow money.

20

Acquiring information

- 14 (1) Monitor may obtain, compile and keep under review information about matters relating to the exercise of its functions.
- (2) Where Monitor exercises the power under sub-paragraph (1), it must do so with a view to (among other things) ensuring that it has sufficient information to take informed decisions and to exercise its other functions effectively.
- (3) In exercising the power under sub-paragraph (1), Monitor may carry out, commission or support (financially or otherwise) research.

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General power

- 15 Monitor may do anything which appears to it to be necessary or expedient for the purposes of, or in connection with, the exercise of its functions.

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Finance

- 16 (1) The Secretary of State may make payments to Monitor out of money provided by Parliament of such amounts as the Secretary of State considers appropriate.
- (2) Payments made under sub-paragraph (1) may be made at such times and on such conditions (if any) as the Secretary of State considers appropriate. 5

Accounts of NHS foundation trusts

- 17 (1) Monitor must prepare in respect of each financial year a set of accounts which consolidates the annual accounts of all NHS foundation trusts.
- (2) The Secretary of State may, with the approval of the Treasury, direct Monitor to prepare a set of accounts in respect of such period as may be specified in the direction which consolidates any accounts prepared by NHS foundation trusts by virtue of paragraph 25(1A) of Schedule 7 to the National Health Service Act 2006 in respect of that period. 10
- (3) In preparing any consolidated accounts under this paragraph, Monitor must comply with directions given by the Secretary of State with the approval of the Treasury as to – 15
- (a) the content and form of the consolidated accounts;
- (b) the methods and principles according to which the consolidated accounts should be prepared. 20
- (4) Monitor must send a copy of any consolidated accounts under this paragraph to the Secretary of State and, if the Secretary of State so directs, the Comptroller and Auditor General – 25
- (a) accompanied by such other reports or information as the Secretary of State may direct, and
- (b) within the relevant period.
- (5) In sub-paragraph (4)(b), the relevant period is – 30
- (a) in relation to consolidated accounts under sub-paragraph (1), such period after the end of the financial year concerned as the Secretary of State may direct;
- (b) in relation to consolidated accounts under sub-paragraph (2), such period as the Secretary of State may direct.
- (6) Before giving a direction under sub-paragraph (5), the Secretary of State must consult Monitor.
- (7) The Comptroller and Auditor General must – 35
- (a) examine, certify and report on any consolidated accounts sent under this paragraph,
- (b) if the Secretary of State so directs, send a copy of the report on the accounts to the Secretary of State, and
- (c) if the Secretary of State so directs, lay copies of the accounts and the report on them before Parliament. 40
- (8) Monitor must act with a view to securing that NHS foundation trusts –
- (a) comply promptly with requests from it or the Secretary of State for information relating to their accounts, and

(b) otherwise act so as to facilitate the preparation of accounts by the Secretary of State.

- (9) This paragraph does not apply to the financial year specified for the purposes of section 140(7) (which provides for the order that commences section 140, which itself relates to the preparation of the accounts of NHS foundation trusts, to specify the first financial year to which that section will apply) or to the subsequent financial years. 5

Accounts of Monitor

- 18 (1) Monitor must keep proper accounts and proper records in relation to the accounts. 10
- (2) The Secretary of State may, with the approval of the Treasury, give directions to Monitor as to—
- (a) the content and form of its accounts, and
- (b) the methods and principles to be applied in the preparation of its accounts. 15
- (3) In sub-paragraph (2), the reference to accounts includes Monitor’s annual accounts prepared under paragraph 19 and any interim accounts prepared by virtue of paragraph 20.
- 19 (1) Monitor must prepare annual accounts in respect of each financial year.
- (2) Monitor must send copies of the annual accounts to the Secretary of State and the Comptroller and Auditor General within such period after the end of the financial year to which the accounts relate as the Secretary of State may direct. 20
- (3) The Comptroller and Auditor General must—
- (a) examine, certify and report on the annual accounts, and 25
- (b) lay copies of them and the report before Parliament.
- 20 (1) The Secretary of State may, with the approval of the Treasury, direct Monitor to prepare accounts in respect of such period or periods as may be specified in the direction (“interim accounts”).
- (2) Monitor must send copies of any interim accounts to the Secretary of State and, if the Secretary of State so directs, the Comptroller and Auditor General within such period as the Secretary of State may direct. 30
- (3) The Comptroller and Auditor General must—
- (a) examine, certify and report on any interim accounts sent by virtue of sub-paragraph (2), 35
- (b) if the Secretary of State so directs, send a copy of the report on the accounts to the Secretary of State, and
- (c) if the Secretary of State so directs, lay copies of the accounts and the report on them before Parliament.

Reports and other information 40

- 21 (1) As soon as practicable after the end of each financial year, Monitor must prepare an annual report on how it has exercised its functions during the year.

- (2) The report must, in particular, set out the measures that Monitor has taken to promote economy, efficiency and effectiveness in the use of resources for the exercise of its functions.
- (3) Monitor must –
 - (a) lay a copy of the report before Parliament, and 5
 - (b) once it has done so, send a copy of it to the Secretary of State.
- (4) Monitor must provide the Secretary of State with –
 - (a) such other reports and information relating to the exercise of Monitor’s functions as the Secretary of State may require;
 - (b) such information about NHS foundation trusts that Monitor has in its possession as the Secretary of State may require. 10

Recommendations by Committees in Parliament

- 22 Monitor must respond in writing to any recommendation about its exercise of its functions that a Committee of either House of Parliament or a Committee of both Houses makes. 15

Seal and evidence

- 23 (1) The application of Monitor’s seal must be authenticated by the signature of the chair or any other person who has been authorised (generally or specifically) for that purpose.
- (2) A document purporting to be duly executed under Monitor’s seal or to be signed on its behalf must be received in evidence and, unless the contrary is proved, taken to be so executed or signed. 20

Status

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

SCHEDULE 8

Sections 92 and 128

REFERENCES BY MONITOR TO THE COMPETITION COMMISSION

Variation of reference 30

- 1 (1) Monitor may, at any time, by notice given to the Competition Commission vary a reference –
 - (a) by adding to the matters specified in the reference, or
 - (b) by excluding from the reference some of the matters so specified.
- (2) On receipt of a notice under sub-paragraph (1), the Commission must give effect to the variation. 35

Monitor's opinion of public interest etc.

- 2 Monitor may specify in a reference, or a variation under paragraph 1, for the purpose of assisting the Competition Commission in carrying out the investigation on the reference –
- (a) any effects adverse to the public interest which Monitor considers the matters specified in the reference or variation have or may be expected to have, and 5
 - (b) any changes in relation to those matters by which Monitor considers those effects could be remedied or prevented.

Publication etc. of reference 10

- 3 As soon as practicable after making a reference, or a variation under paragraph 1, Monitor –
- (a) must send a copy of the reference or variation to the relevant persons, and
 - (b) must publish particulars of the reference or variation. 15

Information

- 4 (1) Monitor must, for the purpose of assisting the Competition Commission in carrying out an investigation on a reference, or in carrying out the function under paragraph 8, give the Commission –
- (a) such information in Monitor's possession as relates to matters within the scope of the investigation or the carrying out of the function and – 20
 - (i) is requested by the Commission for that purpose, or
 - (ii) is information which Monitor considers it would be appropriate for that purpose to give to the Commission without request, and 25
 - (b) such other assistance as the Commission may require, and as is within its power to give, in relation to any such matters.
- (2) The Commission must, for the purpose of carrying out the investigation or the function, take account of such information as is given to it for that purpose under sub-paragraph (1). 30

Time limits

- 5 (1) A reference must specify a period within which the Competition Commission must make a report on the reference.
- (2) A period specified for the purposes of sub-paragraph (1) must not be longer than six months beginning with the date of the reference. 35
- (3) A report of the Commission on a reference does not have effect (and no action may be taken in relation to it under paragraph 7) unless the report is made before the end of –
- (a) the period specified in the reference, or 40
 - (b) such further period as is allowed under sub-paragraph (4).
- (4) Monitor may, if it receives representations on the subject from the Competition Commission and is satisfied that there are special reasons why

the report cannot be made within the period specified in the reference, extend the period by no more than six months.

- (5) But Monitor may not make more than one extension under sub-paragraph (4) in relation to the same reference.
- (6) Where Monitor makes an extension under sub-paragraph (4), it must send notice of the extension to the relevant persons. 5
- (7) Monitor must also publish the notice.

Reports on references

- 6 (1) In making a report on a reference, the Competition Commission –
 - (a) must include in the report definite conclusions on the questions in the reference together with such an account of its reasons for those conclusions as it considers expedient for facilitating a proper understanding of those questions and of its conclusions, 10
 - (b) where it concludes that any of the matters specified in the reference operate, or may be expected to operate, against the public interest, must specify in the report the effects adverse to the public interest which those matters have or may be expected to have, and 15
 - (c) where it concludes that any adverse effects so specified could be remedied or prevented by changes in relation to the matters specified in the reference, must specify in the report changes which could remedy or prevent those effects. 20
- (2) For the purposes of paragraphs 7 and 8, a conclusion in a report of the Commission is to be disregarded if the conclusion is not that of at least two-thirds of the members of the group constituted in connection with the reference in pursuance of paragraph 15 of Schedule 7 to the Competition Act 1998. 25
- (3) If a member of a group so constituted disagrees with a conclusion in a report made on a reference, the report must, if the member so wishes, include a statement of the member's disagreement and reasons for disagreeing.
- (4) A report of the Commission on a reference must be sent to Monitor. 30
- (5) On receiving a report on a reference, Monitor must send a copy of it to –
 - (a) the Secretary of State;
 - (b) the National Health Service Commissioning Board.
- (6) Not less than 14 days after the Secretary of State receives that copy, Monitor must send a copy to the relevant persons. 35
- (7) Not less than 24 hours after complying with sub-paragraph (6), Monitor must publish the report.

Changes following report

- 7 (1) This paragraph applies where a report of the Competition Commission on a reference – 40
 - (a) includes conclusions to the effect that any of the matters specified in the reference operate, or may be expected to operate, against the public interest,

-
- (b) specifies effects adverse to the public interest which those matters have or may be expected to have,
 - (c) includes conclusions to the effect that those effects could be remedied or prevented by changes to the matters specified in the reference, and 5
 - (d) specifies changes by which those effects could be remedied or prevented.
- (2) Monitor must make such changes to the matters specified in the reference as it considers necessary for the purpose of remedying or preventing the adverse effects specified in the report. 10
 - (3) Before making changes under this paragraph, Monitor must have regard to the changes specified in the report.
 - (4) Before making changes under this paragraph, Monitor must send a notice –
 - (a) stating that it proposes to make the changes and setting out their effect, 15
 - (b) stating the reasons why it proposes to make the changes, and
 - (c) specifying the period within which representations with respect to the changes may be made.
 - (5) A period specified for the purposes of sub-paragraph (4)(c) must not be less than 28 days beginning with the day on which the notice is published. 20
 - (6) Monitor must send the notice to the relevant persons.
 - (7) Monitor must also publish the notice.
 - (8) After considering such representations as it receives before the end of the period under sub-paragraph (4)(c), Monitor must send a notice to the Competition Commission – 25
 - (a) specifying the changes it proposes to make to remedy or prevent the adverse effects specified in the report, and
 - (b) stating the reasons for proposing to make the changes.
 - (9) Monitor must include with the notice under sub-paragraph (8) a copy of the representations referred to in that sub-paragraph. 30
 - (10) If a direction under paragraph 8 is not given to Monitor before the end of the period of four weeks beginning with the date on which it sends the notice under sub-paragraph (8), Monitor must make the changes specified in the notice.
 - (11) If a direction under that paragraph is given to Monitor before the end of that period, Monitor must make such of the changes as are not specified in the direction. 35

Competition Commission’s power to veto changes

- 8 (1) The Competition Commission may, within the period of four weeks beginning with the day on which it is sent a notice under paragraph 7(8), direct Monitor – 40
 - (a) not to make the changes set out in the notice, or
 - (b) not make such of the changes as may be specified in the direction.
- (2) Monitor must comply with a direction under sub-paragraph (1).

- (3) The Secretary of State may, within that period and on the application of the Commission, direct that the period for giving a direction under sub-paragraph (1) (and, accordingly, the period referred to in paragraph 7(10)) is to be extended by 14 days.
- (4) The Commission may give a direction under sub-paragraph (1) only in respect of such of the changes specified in the notice under paragraph 7(8)(a) as it considers are necessary for the purpose of remedying or preventing one or more of the adverse effects specified in the report as effects which could be remedied or prevented by changes. 5
- (5) If the Commission gives a direction under sub-paragraph (1), it— 10
 - (a) must give notice specifying the changes proposed by Monitor, the terms of the direction and the reasons for giving it, and
 - (b) must itself make such changes to the matters specified in the reference as it considers necessary for the purpose of remedying or preventing the effects referred to in sub-paragraph (6). 15
- (6) The effects mentioned in sub-paragraph (5)(b) are —
 - (a) in the case of a direction under sub-paragraph (1)(a), the adverse effects specified in the report as effects which could be remedied or prevented by changes, or
 - (b) in the case of a direction under sub-paragraph (1)(b), such of those adverse effects as are not remedied or prevented by the changes made by Monitor under paragraph 7(11). 20
- (7) In exercising its function under sub-paragraph (5)(b), the Commission must have regard to the matters to which Monitor must have regard when determining the matters specified in the reference. 25
- (8) Before making changes under sub-paragraph (5)(b), the Commission must send a notice —
 - (a) stating that it proposes to make the changes and specifying them,
 - (b) stating the reason why it proposes to make them, and
 - (c) specifying the period within which representations on the proposed changes may be made. 30
- (9) The period specified for the purposes of sub-paragraph (8)(c) must not be less than 28 days beginning with the date on which the notice is published.
- (10) The Commission must send a notice under sub-paragraph (8) to the relevant persons. 35
- (11) The Commission must also publish the notice.
- (12) After making changes under this paragraph, the Commission must publish a notice —
 - (a) stating that it has made the changes and specifying them, and
 - (b) stating the reason why it has made them. 40

Disclosure etc.

- 9 (1) Before making a report on a reference, sending a notice under paragraph 8(5)(a) or (8) or publishing a notice under paragraph 8(12), the Competition Commission must have regard to the following considerations.

- (2) The first consideration is the need to exclude from disclosure (so far as practicable) any information the disclosure of which the Commission considers is contrary to the public interest.
- (3) The second consideration is the need to exclude from disclosure (so far as practicable) – 5
- (a) commercial information the disclosure of which the Commission considers might significantly harm the legitimate business interests of the undertaking to which it relates, or
- (b) information relating to the private affairs of an individual whose disclosure the Commission considers might significantly harm the individual’s interests. 10
- (4) The third consideration is the extent to which the disclosure of the information mentioned in sub-paragraph (3)(a) or (b) is necessary for the purposes of the report.
- (5) For the purposes of the law relating to defamation, absolute privilege attaches to the report or notice. 15

Powers of investigation

- 10 (1) The following sections of Part 3 of the Enterprise Act 2002 apply, with the modifications in sub-paragraphs (3), (5) and (6), for the purposes of a reference as they apply for the purposes of references under that Part – 20
- (a) section 109 (attendance of witnesses and production of documents),
- (b) section 110 (enforcement of powers under section 109: general),
- (c) section 111 (penalties),
- (d) section 112 (penalties: main procedural requirements),
- (e) section 113 (payments and interest by instalments), 25
- (f) section 114 (appeals in relation to penalties),
- (g) section 115 (recovery of penalties),
- (h) section 116 (statement of policy),
- (i) section 117 (offence of supplying false or misleading information), and 30
- (j) section 125 (offences by bodies corporate) so far as relating to section 117.
- (2) Those sections of that Part of that Act apply, with the modifications in sub-paragraphs (4), (5) and (7), for the purposes of an investigation by the Competition Commission in the exercise of its functions under paragraph 7, as they apply for the purposes of an investigation on references under that Part. 35
- (3) Section 110, in its application by virtue of sub-paragraph (1), has effect as if – 40
- (a) subsection (2) were omitted,
- (b) for subsections (5) to (8) there were substituted –
- “(5) Where the Commission considers that a person has intentionally altered, suppressed or destroyed a document which he has been required to produce under section 109, it may impose a penalty in accordance with section 111.”, and 45
- (c) in subsection (9), for the words from “or (3)” to “section 65(3))” there were substituted “, (3) or (5)”.

- (4) Section 110, in its application by virtue of sub-paragraph (2), has effect as if –
- (a) the modifications in sub-paragraph (3) were made,
 - (b) in subsection (4), for the words “the publication of the report of the Commission on the reference concerned” there were substituted “the relevant day”, and 5
 - (c) after that subsection there were inserted –
 - “(4A) The relevant day for the purposes of subsection (4) is –
 - (a) the day on which the Commission published a notice under paragraph 8(12) of Schedule 8 to the Health and Social Care Act 2011 in connection with the reference concerned, or 10
 - (b) if it has not given a direction under paragraph 8(1) of that Schedule in connection with the reference and within the permitted period, the latest day on which it was possible to give such a notice within that period.” 15
- (5) Section 111, in its application by virtue of sub-paragraph (1) or (2), has effect as if –
- (a) in subsection (1), for “or (3)” there were substituted “, (3) or (5)”, and 20
 - (b) in subsections (3) and (6), after “110(3)” there were inserted “or (5)”.
- (6) Section 111(5)(b)(ii), in its application by virtue of sub-paragraph (1), has effect as if –
- (a) for the words from “published (or, in the case of a report under section 50 or 65, given)” there were substituted “made”, 25
 - (b) for the words “published (or given”, in each place they appear, there were substituted “made”, and
 - (c) the words “by this Part” were omitted.
- (7) Section 111(5)(b)(ii), in its application by virtue of sub-paragraph (2), has effect as if for sub-paragraph (ii) there were substituted – 30
- “(ii) if earlier, the relevant day (which for the purposes of this subsection is to be construed in accordance with section 110(4A).”
- (8) Section 112, in its application by virtue of sub-paragraph (1) or (2), has effect as if, in subsection (1), for “or (3)” there were substituted “, (3) or (5)”. 35
- (9) Section 114, in its application by virtue of sub-paragraph (1) or (2), has effect as if, in subsection (1), for “or (3)” there were substituted “, (3) or (5)”.
- (10) Section 115, in its application by virtue of sub-paragraph (1) or (2), has effect as if for “or (3)” there were substituted “, (3) or (5)”.
- (11) Section 116, in its application by virtue of sub-paragraph (1) or (2), has effect as if, in subsection (2), for “or (3)” there were substituted “, (3) or (5)”. 40
- (12) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 116 of that Act (including, in particular, provisions relating to offences and the making of orders) have effect for the purposes of the application of those sections by virtue of sub-paragraph (1) or (2) in relation to those sections as applied by virtue of the sub-paragraph concerned. 45

- (13) Accordingly, corresponding provisions of this Act do not have effect in relation to those sections as applied by virtue of the sub-paragraph concerned.

SCHEDULE 9

Section 97

FURTHER PROVISION ABOUT ENFORCEMENT POWERS

5

PART 1

DISCRETIONARY REQUIREMENTS

Procedure

- | | | |
|---|--|----|
| 1 | <p>(1) Where Monitor proposes to impose a discretionary requirement on a person, Monitor must give notice to that person (a “notice of intent”).</p> | 10 |
| | <p>(2) A notice of intent must –</p> <ul style="list-style-type: none"> (a) state that Monitor proposes to impose the discretionary requirement and set out its effect, (b) set out the grounds for the proposal to impose the requirement, (c) set out the circumstances (if any) in which Monitor may not impose the requirement, and (d) specify the period (“the notice period”) within which representations with respect to the proposal may be made to Monitor. | 15 |
| | <p>(3) The notice period must be not less than 28 days beginning with the day after that on which the notice of intent is received.</p> | 20 |
| | <p>(4) But where Monitor –</p> <ul style="list-style-type: none"> (a) proposes to impose a compliance requirement or restoration requirement, and (b) considers that a shorter notice period is necessary to prevent or minimise further breaches of the kind referred to in section 95(1), <p>the notice period is to be such shorter period as Monitor may determine, but not less than 5 days beginning with the day after that on which the notice of intent is received.</p> | 25 |
| 2 | <p>(1) After the end of the notice period Monitor must decide whether to –</p> <ul style="list-style-type: none"> (a) impose the discretionary requirement, with or without modifications, or (b) impose any other discretionary requirement. | 30 |
| | <p>(2) Where Monitor decides under sub-paragraph (1) to impose a discretionary requirement on a person Monitor must give notice to that person (a “final notice”).</p> | 35 |
| | <p>(3) A final notice must –</p> <ul style="list-style-type: none"> (a) state that Monitor has decided to impose the discretionary requirement and set out its effect, (b) set out the grounds for imposing the requirement, (c) in the case of a variable monetary penalty, state – <ul style="list-style-type: none"> (i) how payment may be made, | 40 |

- (ii) the period within which payment must be made, and
 - (iii) the rate of interest payable for late payment of the penalty,
 - (d) set out the consequences of failing to comply with the requirement, and
 - (e) explain the rights of appeal conferred by paragraph 3. 5
 - (4) Monitor must not decide under sub-paragraph (1) to impose a variable monetary penalty unless the notice of intent was given before the end of the period of 5 years beginning with the day (or, in the case of a continuing breach, the last day) on which the breach giving rise to the imposition of the discretionary requirement occurred. 10
 - 3 (1) A person may appeal to the First-tier Tribunal against a decision of Monitor to impose a discretionary requirement.
 - (2) The grounds for an appeal under this paragraph are –
 - (a) that the decision was based on an error of fact,
 - (b) that the decision was wrong in law, 15
 - (c) in the case of a decision imposing a variable monetary penalty, that the amount of the penalty is unreasonable,
 - (d) in the case of a decision to impose a compliance requirement or a restoration requirement, that the nature of the requirement is unreasonable, or 20
 - (e) that the decision was unreasonable for any other reason.
 - (3) The discretionary requirement is suspended pending determination of the appeal.
 - (4) On an appeal under this paragraph, the Tribunal may –
 - (a) confirm, vary or withdraw the discretionary requirement, 25
 - (b) take such steps as Monitor could take in relation to the breach giving rise to the imposition of the requirement, or
 - (c) remit the decision whether to confirm the requirement, or any matter relating to that decision, to Monitor.
- Non-compliance penalties* 30
- 4 (1) If a person fails to comply with a compliance requirement or a restoration requirement Monitor may impose a monetary penalty on that person of such amount as Monitor may determine (a “non-compliance penalty”).
 - (2) Where Monitor proposes to impose a non-compliance penalty on a person Monitor must give notice to that person (a “non-compliance notice”). 35
 - (3) A non-compliance notice must –
 - (a) specify the amount of the non-compliance penalty,
 - (b) set out the grounds for imposing the penalty,
 - (c) state how payment of the penalty may be made,
 - (d) state the period (“the payment period”) within which payment must be made, 40
 - (e) set out the consequences of a failure to pay within the payment period (including any increase in the amount payable), and
 - (f) explain the right of appeal conferred by paragraph 5.

-
- (4) The payment period must be not less than 28 days beginning with the day after that on which the non-compliance notice is received.
- (5) If the whole or any part of a non-compliance penalty is not paid by the time it is required to be paid Monitor may increase the amount payable by no more than 50% of the amount of the penalty. 5
- (6) A non-compliance penalty ceases to be payable if before the end of the payment period the person on whom it was imposed complies with the requirement in respect of which it was imposed.
- 5 (1) A person may appeal to the First-tier Tribunal against a decision of Monitor to impose a non-compliance penalty. 10
- (2) The grounds for such an appeal are –
- (a) that the decision was based on an error of fact,
 - (b) that the decision was wrong in law, or
 - (c) that the decision was, or the amount of the penalty is, unfair or unreasonable. 15
- (3) The non-compliance penalty is suspended pending determination of the appeal.
- (4) On an appeal, the Tribunal may –
- (a) confirm, vary or withdraw the non-compliance penalty, or
 - (b) remit the decision whether to confirm the penalty, or any matter relating to that decision, to Monitor. 20

Recovery of financial penalties

- 6 (1) Amounts payable to Monitor of the kind mentioned in sub-paragraph (2) are recoverable summarily as a civil debt (but this does not affect any other method of recovery). 25
- (2) The amounts are –
- (a) a variable monetary penalty and any interest payable on it, or
 - (b) a non-compliance penalty.

Payments of penalties etc. into Consolidated Fund

- 7 Monitor must pay any sums it receives in respect of any of the following into the Consolidated Fund – 30
- (a) a variable monetary penalty and any interest payable on it, or
 - (b) a non-compliance penalty.

PART 2

ENFORCEMENT UNDERTAKINGS 35

Procedure

- 8 (1) Monitor must publish a procedure for entering into enforcement undertakings.
- (2) Monitor may revise the procedure and if it does so, Monitor must publish the procedure as revised. 40

- (3) Monitor must consult such persons as it considers appropriate before establishing or revising the procedure.
- 9 Where Monitor accepts an enforcement undertaking, Monitor must publish the undertaking.
- Variation of terms* 5
- 10 The terms of an enforcement undertaking (including in particular the action specified under it and the period so specified within which the action must be taken) may be varied if both the person giving the undertaking and Monitor agree.
- Compliance certificates* 10
- 11 (1) Where Monitor is satisfied that an enforcement undertaking has been complied with, Monitor must issue a certificate to that effect (referred to in this Schedule as a “compliance certificate”).
- (2) A person who has given an enforcement undertaking may at any time make an application to Monitor for a compliance certificate. 15
- (3) The application must be made in such form, and accompanied by such information, as Monitor requires.
- (4) Monitor must decide whether or not to issue a compliance certificate, and give notice to the applicant of its decision, before the end of the period of 14 days beginning with the day after that on which the application is received. 20
- 12 (1) An appeal lies to the First-tier Tribunal against a decision of Monitor to refuse an application for a certificate of compliance.
- (2) The grounds for an appeal under this paragraph are that the decision –
- (a) was based on an error of fact,
- (b) was wrong in law, or 25
- (c) was unfair or unreasonable.
- (3) On an appeal under this paragraph, the Tribunal may confirm Monitor’s decision or direct that it is not to have effect.
- Inaccurate, incomplete or misleading information*
- 13 Where Monitor is satisfied that a person who has given an enforcement undertaking has supplied Monitor with inaccurate, misleading or incomplete information in relation to the undertaking – 30
- (a) the person is to be treated as having failed to comply with the undertaking, and
- (b) accordingly, Monitor must by notice revoke any certificate of compliance given to that person. 35

SCHEDULE 10

Section 106

PROCEDURE ON REFERENCES UNDER SECTION 106

Contents etc. of reference

- | | | |
|---|---|----|
| 1 | (1) A reference under section 106 must specify – | |
| | (a) Monitor’s reasons for proposing the method to which the reference relates, and | 5 |
| | (b) its representations as to why the grounds referred to in section 107(4) do not apply. | |
| | (2) Monitor must give notice of the reference to – | |
| | (a) the National Health Service Commissioning Board, and | 10 |
| | (b) each licence holder (referred to in this Schedule as an “objector”) who objected to the proposed method to which the reference relates. | |
| | (3) The notice must be accompanied by a copy of the reference. | |

Representations by objectors

- | | | |
|---|--|----|
| 2 | (1) If an objector wishes to make representations to the Competition Commission on the matters specified in the reference for the purposes of paragraph 1(1), the objector must do so before the end of the period of 10 working days beginning with the day on which the objector receives the notice under paragraph 1(2). | 15 |
| | (2) The objector must give Monitor a copy of the representations. | 20 |
| | (3) If Monitor wishes to reply to representations under sub-paragraph (1), it must do so before the end of the period of 10 working days beginning with the day on which it receives the copy under sub-paragraph (2). | |
| | (4) Monitor must send a copy of its reply to the objector who made the representations. | 25 |
| | (5) In this Schedule, “working day” means any day other than – | |
| | (a) Saturday or Sunday, | |
| | (b) Christmas Day or Good Friday, or | |
| | (c) a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971. | 30 |

Functions of Commission in relation to reference

- | | | |
|---|---|----|
| 3 | (1) The following functions of the Competition Commission must be performed, in accordance with rules under paragraph 11, by a group selected for the purpose by the Chairman of the Commission – | |
| | (a) considering a reference under section 106, | 35 |
| | (b) making a determination on the reference, | |
| | (c) giving directions and taking other steps to give effect to the Commission’s determination on the reference. | |
| | (2) A group selected under this paragraph must consist of three members of the Commission. | 40 |

- (3) The Chairman of the Commission must appoint one of the members as chair of the group.
- (4) The Chairman of the Commission may select a member of the Commission to replace a person as a member of group if—
 - (a) the person being replaced has ceased to be a member of the Commission, 5
 - (b) the Chairman is satisfied that the person being replaced will be unable, for a substantial period, to perform duties as a member of the group, or
 - (c) it appears to the Chairman that it is inappropriate, because of a particular interest of the person being replaced, for that person to remain a member of the group. 10
- (5) The replacement of a member of a group does not prevent the group from continuing after the replacement with anything begun before it.
- (6) The Chairman of the Commission may be appointed as, or may be selected to replace a person as, a member of a group (including as chair of the group). 15
- (7) A decision of a group is effective only if—
 - (a) all the members of the group are present when it is made, and
 - (b) at least two members of the group are in favour of it.

Timetable for determination on reference 20

- 4 (1) The group with the function of making a determination on a reference must make the determination before the end of the period of 30 working days following the last day for the making by Monitor of a reply in accordance with paragraph 2.
- (2) If that group is satisfied that there are good reasons for departing from the normal requirements, it may (on one occasion only) extend that period by not more than 20 working days. 25
- (3) The Competition Commission must ensure that an extension under sub-paragraph (2) is notified to—
 - (a) Monitor, 30
 - (b) the National Health Service Commissioning Board, and
 - (c) every objector who made representations in accordance with paragraph 2.

Matters to be considered on determination

- 5 (1) If the group with the function of determining a reference considers it necessary to disregard the matters referred to in sub-paragraph (2) in order to secure the making of the determination of the appeal within the period allowed by paragraph 4, it may do so. 35
- (2) The matters mentioned in sub-paragraph (1) are—
 - (a) all matters raised by an objector in representations under paragraph 2 that the objector did not raise at the time of the consultation under section 105, and 40
 - (b) all matters raised by Monitor in replies under paragraph 2 that it did not include in the reference.

Production of documents

- 6 (1) The Competition Commission may by notice require a person to produce to it the documents specified or otherwise identified in the notice.
- (2) The power to require the production of a document is a power to require its production – 5
- (a) at the time and place specified in the notice, and
- (b) in a legible form.
- (3) The Competition Commission may take copies of a document produced to it under this paragraph.

Oral hearings 10

- 7 (1) For the purposes of this Schedule, an oral hearing may be held, and evidence may be taken on oath by a group with the function of making a determination on a reference under section 106.
- (2) A group with that function may administer oaths for the purposes of this Schedule. 15
- (3) The Competition Commission may by notice require a person –
- (a) to attend at a time and place specified in the notice, and
- (b) to give evidence at that time and place to a group with that function.
- (4) At an oral hearing, the group conducting the hearing may require a person who comes within sub-paragraph (5), if present at the hearing, to give evidence or to make representations. 20
- (5) A person comes within this sub-paragraph if the person is –
- (a) an objector who has made representations in accordance with paragraph 2,
- (b) a person attending the hearing as a representative of a person mentioned in paragraph (a), or 25
- (c) a person attending the hearing as a representative of Monitor.
- (6) A person who gives oral evidence at the hearing may be cross-examined by or on behalf of any other person who is entitled to give evidence at the hearing. 30
- (7) If a person is not present at a hearing and so is not made subject to a requirement under sub-paragraph (3) –
- (a) the Competition Commission is not required to give notice to the person under that sub-paragraph, and
- (b) the group conducting the hearing may make a determination on the reference without hearing that person’s evidence or representations. 35
- (8) Where a person is required under this paragraph to attend at a place more than 10 miles from that person’s place of residence, the Competition Commission must pay the person the necessary expenses of attending.

Written statements 40

- 8 (1) The Commission may by notice require a person to produce a written statement with respect to a matter specified in the notice to a group with the function of making a determination on a reference under section 106.

- (2) The power to require the production of a written statement includes power to specify the time and place at which it is to be produced.
- (3) The written statement must be verified in accordance with a statement of truth.
- (4) In this paragraph and paragraph 9, “statement of truth” means a statement that the person producing the document which includes the statement believes the matters stated as facts in the document to be true. 5

Defaults in relation to evidence

- 9 (1) This paragraph applies if a person (“the defaulter”)—
 - (a) fails to comply with a notice or other requirement under paragraph 6, 7 or 8, 10
 - (b) in complying with a notice under paragraph 8, makes a statement that is false in any material particular, or
 - (c) in providing information otherwise verified in accordance with a statement of truth required rules under paragraph 11, provides information that is false in a material particular. 15
- (2) A member of the Commission may certify the failure, or the fact that a false statement has been made, to the High Court.
- (3) The High Court may inquire into a matter so certified.
- (4) If the High Court, having heard any witness on behalf of or against the defaulter and any statement in the defaulter’s defence, is satisfied that the defaulter did, without reasonable excuse, the act referred to in subparagraph (1), it may punish the defaulter as if the defaulter had been guilty of contempt of court. 20

General provisions relating to evidence 25

- 10 (1) No person may be compelled to give evidence under paragraph 6, 7 or 8 which the person could not be compelled to give in civil proceedings in the High Court.
- (2) A notice under paragraph 6, 7 or 8 may be issued on the Competition Commission’s behalf by a member of the Commission or its secretary. 30

Procedural rules

- 11 (1) The Competition Commission may make rules of procedure for determinations on references under section 106.
- (2) Those rules may include provision supplementing the provisions of this Schedule in relation to any notice, hearing or requirement for which this Schedule provides; and that provision may, in particular, impose time limits or other restrictions on—
 - (a) the taking of evidence at an oral hearing, or
 - (b) the making of representations at an oral hearing. 35
- (3) The rules may apply, with or without modification, provision included in appeal rules under Schedule 22 to the Energy Act 2004. 40
- (4) The Commission must publish rules made under this paragraph.

- (5) Before making rules under this paragraph, the Commission must consult such persons as it considers appropriate.
- (6) Rules under this paragraph may make different provision for different cases.

Costs

- 12 (1) A group that makes a determination on a reference under section 106 must make an order requiring the payment to the Competition Commission of the costs incurred by the Commission in connection with the appeal. 5
- (2) Where it is determined that the method to which the reference relates is not appropriate, the order must require those costs to be paid by Monitor.
- (3) Where it is determined that the method to which the reference relates is appropriate, the order must require those costs to be paid by such objectors as are specified in the order. 10
- (4) Where the order specifies more than one objector, it may specify the proportions in which the objectors are to be liable for the costs.
- (5) The group that makes a determination on a reference under section 106 may also make an order requiring Monitor or an objector who made representations in accordance with paragraph 2 to make payments to the other in respect of costs incurred by the other in connection with the determination. 15
- (6) A person required by an order under this paragraph to pay a sum to another person must comply with the order before the end of the period of 28 days beginning with the day after the making of the order. 20
- (7) Sums required to be paid by an order under this paragraph but not paid within that period are to carry interest at such rate as may be determined in accordance with provision in the order. 25

Power to modify time limits

- 13 The Secretary of State may by order vary any period specified in this Schedule as the period within which something must be done.

SCHEDULE 11

Section 135

PART 3: MINOR AND CONSEQUENTIAL AMENDMENTS 30

General

- 1 (1) Any reference in an instrument or document to the Independent Regulator of NHS Foundation Trusts is to be read, in relation to any time after the commencement of section 51, as a reference to Monitor. 35
- (2) Any reference in this Act or in any other enactment, instrument or document to Monitor is to be read, in relation to any time before that commencement, as a reference to the Independent Regulator of NHS Foundation Trusts.

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

- 2 In the Schedule to the Public Bodies (Admission to Meetings) Act 1960, after paragraph (bj) insert—
“(bk) Monitor;”.

Parliamentary Commissioner Act 1967 (c. 13) 5

- 3 (1) In Schedule 2 to the Parliamentary Commissioner Act 1967 (departments etc. subject to investigation) —
(a) at the appropriate place insert —
“Monitor.”, and
(b) omit the entry for the Independent Regulator of NHS Foundation Trusts. 10
- (2) In consequence of the repeal made by sub-paragraph (1)(b), omit paragraph 17 of Schedule 2 to the Health and Social Care (Community Health and Standards) Act 2003 (which inserted the entry in question).

Superannuation Act 1972 (c. 11) 15

- 4 (1) In Schedule 1 to the Superannuation Act 1972 (kinds of employment to which a scheme under section 1 of that Act can apply), omit the entry for the Independent Regulator of NHS Foundation Trusts.
- (2) In consequence of that repeal, omit paragraph 5(3) of Schedule 2 to the Health and Social Care (Community Health and Standards) Act 2003 (which inserted the entry in question). 20

House of Commons Disqualification Act 1975 (c. 24)

- 5 (1) In Part 3 of Schedule 1 to the House of Commons Disqualification Act 1975 (other disqualifying offices) —
(a) at the appropriate place insert — 25
“Chair or other member of Monitor.”, and
(b) omit the entry for the Chairman and other members of the Independent Regulator of NHS Foundation Trusts.
- (2) In consequence of the repeal made by sub-paragraph (1)(b), omit paragraph 18 of Schedule 2 to the Health and Social Care (Community Health and Standards) Act 2003 (which inserted the entry in question). 30

Northern Ireland Assembly Disqualification Act 1975 (c. 25)

- 6 (1) In Part 3 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (other disqualifying offices) —
(a) at the appropriate place insert — 35
“Chair or other member of Monitor.”, and
(b) omit the entry for the Chairman and other members of the Independent Regulator of NHS Foundation Trusts.
- (2) In consequence of the repeal made by sub-paragraph (1)(b), omit paragraph 19 of Schedule 2 to the Health and Social Care (Community Health and Standards) Act 2003 (which inserted the entry in question). 40

Freedom of Information Act 2000 (c. 36)

- 7 In Part 6 of Schedule 1 to the Freedom of Information Act 2000 (other public bodies and offices: general) –
- (a) at the appropriate place insert – “Monitor.”, and 5
- (b) omit the entry for the Independent Regulator of NHS Foundation Trusts.

National Health Service Act 2006 (c. 41)

- 8 The National Health Service Act 2006 is amended as follows.
- 9 (1) Omit section 31 and Schedule 8 (continuation and constitution of the Independent Regulator of NHS Foundation Trusts). 10
- (2) In consequence of that repeal, omit paragraph 12 of Schedule 3 to the Health Act 1999 (which amended Schedule 8).
- 10 (1) Omit section 32 of that Act (general duty of regulator).
- (2) Despite that repeal, that section is to continue, pending the commencement of section 164 (abolition of NHS trusts in England) to have effect so far as necessary for the purposes of sections 33 to 36 of that Act. 15
- 11 In section 275(1) (general interpretation), at the appropriate place, insert – ““the regulator” means Monitor.”.
- 12 In section 276 (index of defined expressions), in the entry for “the regulator”, for “section 31(1)” substitute “section 275(1)”. 20

National Health Service (Wales) Act 2006 (c. 42)

- 13 In section 184(2)(b) of the National Health Service (Wales) Act 2006 (matters to be contained in reports by overview and scrutiny committee of local authority), for “the Independent Regulator of NHS Foundation Trusts” substitute “Monitor”. 25

Health and Social Care Act 2008 (c. 14)

- 14 The Health and Social Care Act 2008 is amended as follows.
- 15 In section 30(3) (urgent applications for cancellation of registration of service provider: notice requirements), for paragraph (c) substitute – 30
- “(c) where the person registered as a service provider is a person who holds a licence under Chapter 4 of Part 3 of the Health and Social Care Act 2011, to Monitor.”.
- 16 In section 39(1) (notice requirements in relation to certain matters), for paragraph (c) substitute – 35
- “(c) where the person registered as a service provider in respect of the activity is a person who holds a licence under Chapter 4 of Part 3 of the Health and Social Care Act 2011, to Monitor.”.
- 17 In section 59 (power for Secretary of State to confer additional functions on 40

Care Quality Commission), for subsection (2) substitute –

- “(2) The Secretary of State must consult Monitor before making provision under subsection (1) in relation to persons who hold licences under Chapter 4 of Part 3 of the Health and Social Care Act 2011.”

Health Act 2009 (c. 21)

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- 18 In section 2(2) of the Health Act 2009 (bodies required to have regard to NHS Constitution), for paragraph (f) substitute –
“(f) Monitor;”.

SCHEDULE 12

Section 164

ABOLITION OF NHS TRUSTS IN ENGLAND: CONSEQUENTIAL AMENDMENTS 10

PART 1

AMENDMENTS OF THE NATIONAL HEALTH SERVICE ACT 2006

- 1 The National Health Service Act 2006 is amended as follows.
- 2 In section 4(2) (definition of “high security psychiatric services”), omit “and paragraph 15 of Schedule 4 (NHS trusts)”.
- 3 In section 8(2) (bodies to whom Secretary of State may give directions), omit paragraph (c).
- 4 In section 13(9) (bodies to whom liabilities of Strategic Health Authorities may be transferred on abolition), omit paragraph (c).
- 5 In section 40 (power of Secretary of State to give financial assistance to NHS foundation trusts), for subsection (4) substitute –
- “(4) For the purposes of subsection (3), an agreement is an externally financed development agreement if it is certified as such by the Secretary of State.
- (5) The Secretary of State may give a certificate under subsection (4) if –
- (a) in the opinion of the Secretary of State, the purpose or main purpose of the agreement is the provision of facilities or services in connection with the discharge by the NHS foundation trust of any of its functions, and
- (b) a person proposes to make a loan to, or provide any other form of finance for, another party in connection with the agreement.
- (6) In subsection (5)(b), “another party” means any party to the agreement other than the NHS foundation trust.”
- 6 In section 42 (public dividend capital), after subsection (1) insert –
- “(1A) The reference in subsection (1) to an NHS trust is a reference to an NHS trust which was established under section 25 of this Act before its repeal by section 164 of the Health and Social Care Act 2011.”

7	In section 51 (trust funds and trustees), omit subsection (4).	
8	In section 56(1) (application for merger of NHS foundation trusts), in paragraph (b), omit “or an NHS trust”.	
9	In section 56A(1) (application for acquisition of NHS foundation trust or NHS trust) (as inserted by section 154), in paragraph (b), omit “or an NHS trust”.	5
10	In section 57 (mergers, acquisitions and separation of NHS foundation trusts), omit subsection (5).	
11	In section 65(1) (interpretation for provisions about NHS foundation trusts), in the definition of “health service body”, omit “an NHS trust,”.	10
12	In section 65A(1) (application of trust special administration regime), omit paragraph (a).	
13	Section 65B (appointment of trust special administrator to exercise functions of chairman and directors of NHS trust) ceases to have effect, except in so far as it has effect by virtue of section 65E(6) (de-authorised NHS foundation trusts).	15
14	In section 68 (default powers), in subsection (1), omit paragraph (a).	
15	In section 70(1) (transfer of residual liabilities of certain NHS bodies), omit “, an NHS trust”.	
16	In section 71 (schemes for meeting losses etc. of certain health bodies) – (a) in subsection (2), omit paragraph (c), and (b) in subsections (3) and (6), omit “NHS trust”.	20
17	In section 77 (Care Trusts) – (a) in subsection (1)(a) omit “an NHS Trust or”, and (b) in subsections (10) and (12) for “NHS trust or” substitute “a”.	25
18	In section 183 (payments of travelling expenses) – (a) in paragraph (a), omit “, an NHS trust”, (b) in paragraph (b), omit “an NHS trust or”, and (c) in paragraph (c), omit “to an NHS trust and”.	
19	In section 185(2) (charges for more expensive supplies), omit “, an NHS trust”.	30
20	In section 186(2) (charges for repairs and replacements in certain cases), omit “, an NHS trust”.	
21	In section 196(3) (bodies to which provisions about protection from fraud etc. relate), omit paragraph (d).	35
22	In section 217(1) (supplementary provisions about trusts), omit paragraph (h).	
23	In section 242 (public involvement and consultation) – (a) in subsection (1A), in the definition of “relevant English body”, omit paragraph (c), (b) in subsection (4), omit paragraph (b), and (c) in subsection (5), omit “, and NHS trusts falling within paragraph (b) of that subsection,”.	40

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|----|--|----|
| 24 | In section 272(3) (orders not to be made by statutory instrument), omit paragraph (e). | |
| 25 | In section 275 (interpretation), in subsection (1), in the definition of “NHS trust”, for “includes” substitute “means”. | |
| 26 | In section 276 (index of defined expressions), omit the entry for “NHS trust order”. | 5 |
| 27 | In Schedule 15 (accounts and audit), in paragraph 1(1), omit paragraphs (d) and (e). | |
| 28 | In consequence of the repeal of section 56(6) by section 153(8) of this Act, omit paragraph 84 of Schedule 5 to the Health and Social Care Act 2008. | 10 |

PART 2

AMENDMENTS OF OTHER ACTS

Voluntary Hospitals (Paying Patients) Act 1936

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| 29 | In section 1 of the Voluntary Hospitals (Paying Patients) Act 1936 (definitions), in the definition of “NHS trust” omit “the National Health Service Act 2006 or”. | 15 |
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Public Records Act 1958

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|----|--|----|
| 30 | In Schedule 1 to the Public Records Act 1958 (bodies the records of which are public records), in paragraph 3(2), in the entry in the Table for the Department of Health and Social Security, omit the first occurrence of “, National Health Service trusts”. | 20 |
|----|--|----|

Public Bodies (Admissions to Meetings) Act 1960

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|----|---|----|
| 31 | In the Schedule to the Public Bodies (Admissions to Meetings) Act 1958 (bodies to which the Act applies), in paragraph 1(l) omit “section 25 of the National Health Service Act 2006 or”. | 25 |
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Abortion Act 1967

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|----|---|----|
| 32 | In section 1(3) of the Abortion Act 1967 (location of treatment for termination of pregnancy) after “National Health Service trust” insert “established under section 18 of the National Health Service (Wales) Act 2006 or the National Health Service (Scotland) Act 1978”. | 30 |
|----|---|----|

Employers’ Liability (Compulsory Insurance) Act 1969

- | | | |
|----|--|--|
| 33 | In section 3(2)(a) of the Employers’ Liability (Compulsory Insurance) Act 1969 (NHS bodies exempted from insurance requirement), omit “section 25 of the National Health Service Act 2006,”. | |
|----|--|--|

Local Government Act 1972

- | | | |
|----|---|----|
| 34 | In section 113(4) of the Local Government Act 1972 (placing of staff of local authorities at disposal of NHS trusts), omit “section 25 of the National Health Service Act 2006 or”. | 35 |
|----|---|----|

House of Commons Disqualification Act 1975

- 35 In Part 3 of Schedule 1 to the House of Commons Disqualification Act 1975 (offices disqualifying for membership of the House), in the entry for National Health Service trusts omit “the National Health Service Act 2006 or”. 5

Acquisition of Land Act 1981

- 36 The Acquisition of Land Act 1981 is amended as follows.
- 37 In section 16(3)(b) (NHS trusts’ land excluded from compulsory purchase), omit “section 25 of the National Health Service Act 2006 or”.
- 38 In section 17(4) (special parliamentary procedure applying to compulsory purchase orders concerning NHS trusts’ land), in paragraph (aa) of the definition of “statutory undertakers” omit “section 25 of the National Health Service Act 2006 or”. 10

Mental Health Act 1983

- 39 In section 139(4) of the Mental Health Act 1983 (exemption from protection for acts done in pursuance of the Act), omit “under the National Health Service Act 2006 or”. 15

Disabled Persons (Services, Consultation and Representation) Act 1986

- 40 In section 2(5) of the Disabled Persons (Services, Consultation and Representation) Act 1986 (rights of authorised representatives of disabled persons), in paragraph (a) omit “that Act or”. 20

Copyright, Designs and Patents Act 1988

- 41 In section 48 of the Copyright, Designs and Patents Act 1988 (material communicated to the Crown in the course of public business), in subsection (6) omit “section 25 of the National Health Service Act 2006,”. 25

Health and Medicines Act 1988

- 42 In section 7(3) of the Health and Medicines Act 1988 (powers to give directions in relation to financing of the NHS), in paragraph (i) omit “an NHS trust or”.

Road Traffic Act 1988 30

- 43 In section 144(2)(db) of the Road Traffic Act 1988 (exception for ambulances to requirement for third party insurance), omit “section 25 of the National Health Service Act 2006,”.

National Health Service and Community Care Act 1990

- 44 In section 61(3A) of the National Health Service and Community Care Act 1990 (health service bodies exempt from stamp duty), for the words from the beginning to “or” substitute “A National Health Service trust established under the National Health Service (Wales) Act 2006 or”. 35

Access to Health Records Act 1990

- 45 In section 11 of the Access to Health Records Act 1990 (interpretation), in the definition of “health service body”, in paragraph (d), omit “, section 25 of the National Health Service Act 2006”.

Water Industry Act 1991

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- 46 In Schedule 4A to the Water Industry Act 1991 (premises not to be disconnected for non-payment), in paragraph 16 omit “the National Health Service Act 2006 or”.

London Local Authorities Act 1991

- 47 In section 4 of the London Local Authorities Act 1991 (interpretation), in the definition of “establishment for special treatment”, in paragraph (d) omit “section 25 of that Act or”. 10

Social Security Contributions and Benefits Act 1992

- 48 The Social Security Contributions and Benefits Act 1992 is amended as follows. 15
- 49 In section 163(6) (interpretation of Part 11), omit “the National Health Service Act 2006,”.
- 50 In section 171(3) (interpretation of Part 12), omit “the National Health Service Act 2006,”.
- 51 In section 171ZJ(9)(a) (Part 12ZA: supplementary), omit “the National Health Service Act 2006,”. 20
- 52 In section 171ZS(9)(a) (Part 12ZB: supplementary), omit “the National Health Service Act 2006,”.

Welsh Language Act 1993

- 53 In section 6 of the Welsh Language Act 1993 (meaning of “public body”), in subsection (1)(g) omit “the National Health Service Act 2006 or”. 25

Charities Act 1993

- 54 (1) In section 43A(7) of the Charities Act 1993 (annual audit etc. of English NHS charity accounts), in the definition of “English National Health Service charity”, omit paragraphs (c), (d) and (da). 30
- (2) In consequence of the repeal made by sub-paragraph (1), omit paragraph 161(a) of Schedule 1 to the National Health Service (Consequential Provisions) Act 2006.

Health Service Commissioners Act 1993

- 55 In section 2(1) of the Health Service Commissioners Act 1993 (bodies subject to investigation by the Commissioner), omit paragraph (d). 35

Vehicle Excise and Registration Act 1994

- 56 In Schedule 2 to the Vehicle Excise and Registration Act 1994 (vehicle exempt from vehicle excise duty), in paragraph 7(b) omit “the National Health Service Act 2006”.

Value Added Tax Act 1994

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- 57 The Value Added Tax Act 1994 is amended as follows.
- 58 In section 41(7) (definition of “government department”), for “Part I of that Act” substitute “section 18 of the National Health Service (Wales) Act 2006”.
- 59 In Part 2 of Schedule 8 (zero-rated supply of goods and services) –
- (a) in the Notes for group 12 (drugs, medicines, aids for the handicapped), in paragraph (e) of Note (5H) omit “the National Health Service Act 2006 or”, and
 - (b) in the Notes for group 15 (charities, etc.), in paragraph (i) of Note 4 for “Part I of the National Health Service and Community Care Act 1990” substitute “section 18 of the National Health Service (Wales) Act 2006”.

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Employment Rights Act 1996

- 60 The Employment Rights Act 1996 is amended as follows.
- 61 In section 50(8)(a) (right of employees of NHS trusts to time off for public duties), omit “section 25 of the National Health Service Act 2006”.
- 62 In section 218(10)(c) (change of employer) omit “that Act or”.

20

Audit Commission Act 1998

- 63 Omit section 33(8)(c) of the Audit Commission Act 1998 (bodies not subject to certain Commission studies).

Data Protection Act 1998

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- 64 In section 69(3) of the Data Protection Act 1998 (meaning of “health professional”), in paragraph (f) omit “section 25 of the National Health Service Act 2006”.

Greater London Authority Act 1999

- 65 Omit section 309E(5)(h) of the Greater London Authority Act 1999 (NHS trusts to be included among relevant bodies for purposes of Mayor of London’s health inequalities strategy).

30

Care Standards Act 2000

- 66 The Care Standards Act 2000 is amended as follows.
- 67 In section 42(7) (power to extend application of Part 2), in paragraph (b) of the definition of “Welsh NHS bodies” omit the words from “all or most” to the end.

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68	In Schedule 2A (persons subject to review by the Children’s Commissioner for Wales), in paragraph 3 omit the words from “all or most” to the end.	
69	In Schedule 2B (persons whose arrangements are subject to review by the Children’s Commissioner for Wales), in paragraph 4 omit the words from “all or most” to the end.	5
<i>Local Government Act 2000</i>		
70	In section 21C of the Local Government Act 2000 (reports and recommendations of overview and scrutiny committees: duties of certain bodies), in subsection (6) omit paragraph (a).	
<i>Freedom of Information Act 2000</i>		
71	In Part 3 of Schedule 1 to the Freedom of Information Act 2000 (NHS in England and Wales), in paragraph 40, omit “section 25 of the National Health Service Act 2006 or”.	10
<i>International Development Act 2002</i>		
72	In Schedule 1 to the International Development Act 2002 (statutory bodies who may exercise certain powers for the purpose of assisting countries outside the UK), in the entry for National Health Service trusts, omit “the National Health Service Act 2006,”.	15
<i>Nationality, Immigration and Asylum Act 2002</i>		
73	In section 133(4) of the Nationality, Immigration and Asylum Act 2002 (power of medical inspector to disclose information to NHS trusts), in paragraphs (a)(ii) and (b)(ii) omit “section 25 of the National Health Service Act 2006 or”.	20
<i>Community Care (Delayed Discharges etc.) Act 2003</i>		
74	In section 1(1) of the Community Care (Delayed Discharges etc.) Act 2003 (meaning of “NHS body”), in the definition of “NHS body”, after “a National Health Service trust” insert “(in Wales)”.	25
<i>Finance Act 2003</i>		
75	The Finance Act 2003 is amended as follows.	
76	In section 61(3) (bodies that are public authorities for purpose of requirement to comply with planning obligations), under the heading “Health: England and Wales”, in the entry for National Health Service trusts, omit “section 25 of the National Health Service Act 2006 or”.	30
77	In section 66(4) (bodies that are public bodies for purpose of exemption for transfers of land), under the heading “Health: England and Wales”, in the entry for National Health Service trusts, omit “section 25 of the National Health Service Act 2006 or”.	35

Licensing Act 2003

- 78 In section 16(3) of the Licensing Act 2003 (bodies that may apply for premises licence), in the definition of “health service body”, in paragraph (a), omit “section 25 of the National Health Service Act 2006 or”.

Health and Social Care (Community Health and Standards) Act 2003

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- 79 The Health and Social Care (Community Health and Standards) Act 2003 is amended as follows.

- 80 In section 148 (interpretation of Part 2) –
- (a) in the definition of “English NHS body” omit paragraph (c), and
 - (b) in paragraph (b) of the definition of “Welsh NHS body”, omit “all or most of whose hospitals, establishments and facilities are situated in Wales”.

10

- 81 In section 160 (provision of information in personal injury cases), in subsection (4), in the definition of “ambulance trust”, in paragraph (a)(i), omit “section 25 of the 2006 Act”.

15

- 82 In section 162 (payment of NHS charges to hospitals or ambulance trusts), in subsection (6), in the definition of “relevant ambulance trust” –

- (a) before paragraph (a) insert –
 - “(za) In relation to England, means the NHS foundation trust which is designated by the Secretary of State for the purposes of this section in relation to the health service hospital to which the injured person was taken for treatment,”

20

- (b) in paragraph (a) omit “England or”, and
- (c) in sub-paragraph (i) of that paragraph omit “section 25 of the 2006 Act or”.

25

- 83 In section 165 (power to apply provisions about recovery of charges to non NHS hospitals), in subsection (3)(b)(ii) omit “section 25 of the 2006 Act”.

Finance Act 2004

- 84 In section 59 of the Finance Act 2004 (contractors), in subsection (5), in the definition of “NHS trust”, in paragraph (a) omit “section 25 of the National Health Service Act 2006 or”.

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Domestic Violence, Crime and Victims Act 2004

- 85 In section 9(4)(a) of the Domestic Violence, Crime and Victims Act 2004 (duty to have regard to guidance on conduct of domestic homicide reviews), in the entry for NHS trusts omit “section 25 of the National Health Service Act 2006 or”.

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Children Act 2004

- 86 The Children Act 2004 is amended as follows.

- 87 In section 11(1) (NHS trusts’ duty to promote the safety and welfare of children), omit paragraph (f).

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- 88 In section 13(3) (Local Safeguarding Children Boards), in paragraph (f) omit “an NHS trust and”.

Civil Contingencies Act 2004

- 89 In Part 1 of Schedule 1 to the Civil Contingencies Act 2004 (category 1 responders to emergencies), in paragraph 5 omit “section 25 of the 2006 Act, or”. 5

National Health Service (Wales) Act 2006

- 90 In section 206(1) of the National Health Service Act (Wales) 2006 (interpretation), omit the definition of “NHS trust”.

Corporate Manslaughter and Corporate Homicide Act 2007 10

- 91 In section 6(7) of the Corporate Manslaughter and Corporate Homicide Act 2007 (duty of care in emergencies), in the definition of “relevant NHS body”, in paragraph (a) omit “NHS trust”.

Local Government and Public Involvement in Health Act 2007

- 92 The Local Government and Public Involvement in Health Act 2007 is amended as follows. 15

- 93 In section 104(3) (public authorities), omit paragraph (a).

- 94 In section 222 (arrangements regarding local involvement networks)—
(a) omit subsection (3)(b), and
(b) omit subsection (4)(d). 20

- 95 In section 224(2) (duties of service-providers to local involvement networks), omit paragraph (a).

- 96 In section 225(7) (duty to allow entry to local involvement networks), omit paragraph (a).

Criminal Justice and Immigration Act 2008 25

- 97 In section 119(4) of the Criminal Justice and Immigration Act 2008 (offence of causing nuisance or disturbance on NHS premises), in the definition of “relevant English NHS body”, omit paragraph (a).

Health and Social Care Act 2008

- 98 The Health and Social Care Act 2008 is amended as follows. 30

- 99 In section 30(3) (notification of urgent cancellation of registration as service provider), in paragraph (b) omit “or National Health Service trust”.

- 100 In section 39(1) (bodies to be notified of certain matters), in paragraph (b) omit “or National Health Service trust”.

- 101 In section 97(1) (general interpretation of Part 1)—
(a) in the definition of “English NHS body” omit paragraph (c), and
(b) in the definition of “English NHS provider” omit paragraph (b). 35

- 102 In section 153(1) (directing NHS bodies to exercise certain functions in relation to financial assistance), omit paragraph (c).

Autism Act 2009

- 103 In section 4(1) of the Autism Act 2009 (interpretation), in the definition of “NHS body”, omit paragraph (c). 5

Local Democracy, Economic Development and Construction Act 2009

- 104 The Local Democracy, Economic Development and Construction Act 2009 is amended as follows.
- 105 In section 2(2) (duty to promote understanding of functions of certain public bodies), in paragraph (f) for “a National Health Service trust or” substitute “an”. 10
- 106 In section 123(3) (partner authorities), omit paragraph (a).

Health Act 2009

- 107 The Health Act 2009 is amended as follows.
- 108 In section 2(2) (bodies with duty to have regard to NHS Constitution) omit paragraph (c). 15
- 109 In section 8(2) (bodies with duty to publish information on quality of services) omit paragraph (b).

Corporation Tax Act 2010

- 110 In section 986 of the Corporation Tax Act 2010 (meaning of “health service body”), in the table entry for a National health Service Trust, omit “section 25 of the National Health Service Act 2006 or”. 20

Equality Act 2010

- 111 In Part 1 of Schedule 19 to the Equality Act 2010 (bodies subject to public sector equality duty), in the group of entries that includes entries for bodies whose functions relate to the health service, omit the entry for an NHS trust. 25

SCHEDULE 13

Section 167

LOCAL HEALTHWATCH ORGANISATIONS

“SCHEDULE 16A

Section 220A

LOCAL HEALTHWATCH ORGANISATIONS

30

Status

- 1 (1) A Local Healthwatch organisation (“LHW”) is a body corporate.

- (2) An LHW is not to be regarded as a servant or agent of the Crown or to be regarded as enjoying any status, immunity or privilege of the Crown.
- (3) The property of an LHW is not to be regarded as property of, or property held on behalf of, the Crown. 5

Membership

- 2 (1) The Secretary of State may by regulations make provision about the membership of LHWs.
- (2) The regulations may in particular make provision about—
 - (a) the number of members; 10
 - (b) conditions of eligibility for membership;
 - (c) the appointment of members (including who has the power of appointment);
 - (d) the terms of appointment;
 - (e) circumstances in which a person ceases to be a member or may be suspended; 15
 - (f) the payment of remuneration and other amounts to or in respect of members.

Staff

- 3 (1) An LHW may appoint persons as employees. 20
- (2) An employee of an LHW is to be appointed on such terms and conditions (including as to remuneration, pensions and allowances) as the organisation may determine.

General powers

- 4 (1) An LHW may do anything which appears to it to be necessary or expedient for the purpose of, or in connection with, the exercise of its functions. 25
- (2) In particular, that includes—
 - (a) entering into agreements,
 - (b) acquiring and disposing of land and other property, 30
 - (c) co-operating with other public authorities in England, and
 - (d) providing training.
- (3) An LHW must exercise its functions effectively, efficiently and economically.

Committees

- 5 (1) An LHW may appoint committees and sub-committees. 35
- (2) A committee or sub-committee appointed by an LHW under subparagraph (1) may consist of or include persons who are not members of the LHW.

- (3) An LHW may pay remuneration and allowances to persons who are members of a committee or sub-committee of its but are not members of the LHW.

Exercise of functions

- 6 (1) An LHW may arrange for a member, employee, committee or sub-committee of its to exercise functions of its on its behalf. 5
- (2) An LHW may arrange for some other person to exercise functions of its on its behalf.
- (3) An LHW may arrange for persons to assist it in the exercise of functions of its. 10
- (4) Arrangements under sub-paragraph (2) or (3) may include provision for the payment of remuneration or other amounts.

Accounts

- 7 (1) An LHW must keep accounts in such form as the Secretary of State may determine. 15
- (2) An LHW must prepare annual accounts in respect of each financial year in such form as the Secretary of State may determine.
- (3) An LHW must, within such period as the Secretary of State may determine, send copies of its annual accounts to— 20
- (a) the Secretary of State, and
- (b) the Comptroller and Auditor General.
- (4) The Comptroller and Auditor General— 25
- (a) must examine, certify and report on the annual accounts, and
- (b) must lay copies of the accounts, and of the report on them, before Parliament.
- (5) In this paragraph, “financial year” means— 30
- (a) the period beginning with the day on which the LHW is established and ending with the following 31 March, and
- (b) each successive period of 12 months ending with 31 March.”

SCHEDULE 14

Section 214

PART 7: CONSEQUENTIAL AMENDMENTS AND SAVINGS

PART 1

ABOLITION OF THE GENERAL SOCIAL CARE COUNCIL

<i>Amendments to the Care Standards Act 2000 (c. 14)</i>	5
1 The Care Standards Act 2000 is amended as follows.	
2 In section 55(3)(g) (power to treat persons on certain social work courses as social care workers) –	
(a) for “a Council” substitute “the Welsh Council”, and	
(b) after “section 63” insert “, or by the Health and Care Professions Council under article 15 of the Health and Social Work Professions Order 2001,”.	10
3 In section 56 (register of social care workers etc.) –	
(a) in subsection (1), for “Each Council” substitute “The Welsh Council”, and	15
(b) in subsection (4), for “the Council” substitute “the Welsh Council”.	
4 In section 57 (applications for registration), in subsection (1), for “a Council” substitute “the Welsh Council”.	
5 In section 58 (grant or refusal of registration), in subsection (1) for “the Council” substitute “the Welsh Council”.	20
6 In section 58A (visiting social workers from relevant European States) –	
(a) in subsections (3) and (7), for “a Council” substitute “the Welsh Council”, and	
(b) in subsection (6), for “a Council, that” substitute “the Welsh Council, the”.	25
7 In section 59 (removal etc. from register), in subsection (1), for “Each Council” substitute “The Welsh Council”.	
8 In section 60 (rules about registration), for “A Council” substitute “The Welsh Council”.	
9 In section 61 (offence relating to use of title “social worker” etc.) –	30
(a) in subsection (1), after “a person” insert “in Wales”,	
(b) in subsection (2)(a), for “a Council” substitute “the Welsh Council”, and	
(c) in subsection (2)(b), after “the law of” insert “England and Wales so far as applying in relation to England,”.	35
10 In section 62 (codes of practice) –	
(a) in subsection (1), for “Each Council” substitute “The Welsh Council”,	
(b) in subsections (3), (4) and (6), for “a Council” substitute “the Council”, and	
(c) in subsection (5), after “Local authorities” insert “in Wales”.	40
11 In section 63 (approval of courses etc.) –	

	(a) in subsection (1), for “Each Council” substitute “The Welsh Council”, and	
	(b) in subsection (4), for “A Council” substitute “The Council”.	
12	In section 64 (qualifications gained outside Council’s area) –	
	(a) in subsection (A1), for “a Council” substitute “the Welsh Council”,	5
	(b) omit subsection (1), and	
	(c) for the title substitute “Qualifications gained outside the Welsh Council’s area”.	
13	In section 65(1) (power to make rules requiring registered persons to undertake further training), for “A Council” substitute “The Welsh Council”.	10
14	In section 66 (visitors for certain social work courses) –	
	(a) in subsection (1), for “A Council” substitute “The Welsh Council”, and	
	(b) in subsection (3), for “a Council” substitute “the Council”.	
15	In section 67 (functions of the appropriate Minister) –	15
	(a) in subsection (2), for “a Council” substitute “the Welsh Council”, and	
	(b) in subsection (5), omit paragraph (a) (and the “or” following it).	
16	In section 68 (appeals to the Tribunal), in subsections (1) and (1A) for “a Council” substitute “the Welsh Council”.	
17	In section 69 (publication etc. of register), in subsection (1), for “A Council” substitute “The Welsh Council”.	20
18	In section 71 (rules), in subsections (1), (2), (3A) and (4), for “a Council” substitute “the Welsh Council”.	
19	In section 113 (default Ministerial powers), omit subsection (1).	
20	In section 121(13) (index of defined expressions) –	25
	(a) omit the entry for references to the Council, the English Council and the Welsh Council, and	
	(b) at the end insert –	
	“the Welsh Council Section 54”.	
21	Schedule 1 (the Care Councils) is amended as follows.	30
22	Omit paragraph 1 (introductory).	
23	In paragraph 2 (status) –	
	(a) for “An authority” substitute “The Welsh Council”, and	
	(b) for “an authority’s” substitute “the Council’s”.	
24	In paragraph 3(1) (general powers), for “the Secretary of State, an authority” substitute “the Welsh Ministers, the Welsh Council”.	35
25	In paragraph 4 (general duty), for “an authority” substitute “the Welsh Council”.	
26	For paragraph 5 (membership) –	
	(a) for “Each authority” substitute “The Welsh Council”, and	40

- (b) for “the Secretary of State” substitute “the Welsh Ministers”.
- 27 In paragraph 6 (appointment, procedure etc.)—
- (a) for “The Secretary of State” substitute “The Welsh Ministers”,
 - (b) in paragraph (a), for “an authority” substitute “the Welsh Council”,
 - (c) in paragraphs (b), (c) and (d), (in the case of paragraph (d), in each place it appears) for “an authority” substitute “the Council”, and 5
 - (d) in paragraph (c), for “the authority” substitute “the Council”.
- 28 (1) Paragraph 7 (remuneration and allowances) is amended as follows.
- (2) In sub-paragraph (1)—
- (a) for “An authority” substitute “The Welsh Council”, 10
 - (b) for “the authority”, in each place it appears, substitute “the Council”, and
 - (c) for “the Secretary of State” substitute “the Welsh Ministers”.
- (3) In sub-paragraph (2)—
- (a) for “the Secretary of State so determines” substitute “the Welsh Ministers so determine”, 15
 - (b) for “an authority”, in each place it appears, substitute “the Council”, and
 - (c) for “the Secretary of State” substitute “the Welsh Ministers”.
- (4) In sub-paragraph (3)— 20
- (a) for “the Secretary of State determines” substitute “the Welsh Ministers determine”,
 - (b) for “an authority” substitute “the Council”,
 - (c) for “the authority” substitute “the Council”, and
 - (d) for “the Secretary of State” substitute “the Welsh Ministers”. 25
- 29 (1) Paragraph 8 (chief officer) is amended as follows.
- (2) In sub-paragraph (1)—
- (a) for “each authority” substitute “the Welsh Council”, and
 - (b) for “the authority”, in each place it appears, substitute “the Council”.
- (3) In sub-paragraph (2), for “the Secretary of State” (in each place it appears) substitute “the Welsh Ministers”. 30
- (4) In sub-paragraph (3), for “the authority” substitute “the Council”.
- (5) In sub-paragraph (4), for “the Secretary of State” substitute “the Welsh Ministers”.
- 30 (1) Paragraph 12 (staff) is amended as follows. 35
- (2) In sub-paragraph (1), for “An authority” substitute “The Welsh Council”.
- (3) In sub-paragraph (2)—
- (a) for “an authority” substitute “the Council”, and
 - (b) for “the authority” substitute “the Council”.
- (4) In sub-paragraph (3), for “an authority” substitute “the Council”. 40
- (5) In sub-paragraph (4)—
- (a) for “Secretary of State” substitute “Welsh Ministers”,

- (b) in paragraph (a), for “an authority” substitute “the Council”, and
 (c) in paragraph (c), for “the authority” substitute “the Council”.
- 31 (1) Paragraph 13 (delegation of functions) is amended as follows.
- (2) In sub-paragraph (1) –
- (a) for “An authority” substitute “The Welsh Council”, and 5
 (b) for “the authority” substitute “the Council”.
- (3) In sub-paragraph (2) –
- (a) for “An authority” substitute “The Council”, and
 (b) for “the authority” substitute “the Council”.
- 32 In paragraph 14 (arrangements for the use of staff) – 10
- (a) for “The Secretary of State” substitute “The Welsh Ministers”,
 (b) in paragraph (a), for “an authority” substitute “the Welsh Council”,
 and
 (c) in paragraph (b), for “an authority” substitute “the Council”, and for
 “the authority” substitute “the Council”. 15
- 33 In paragraph 16 (payments to authorities) –
- (a) for “The Secretary of State” substitute “The Welsh Ministers”,
 (b) for “an authority” substitute “the Welsh Council”, and
 (c) for “he considers” substitute “they consider”.
- 34 (1) Paragraph 18 (accounts) is amended as follows. 20
- (2) In sub-paragraph (1) –
- (a) for “An authority” substitute “The Welsh Council”, and
 (b) for “the Secretary of State” substitute “the Welsh Ministers”.
- (3) In sub-paragraph (2) –
- (a) for “An authority” substitute “The Council”, and 25
 (b) for “the Secretary of State” substitute “the Welsh Ministers”.
- (4) In sub-paragraph (3) –
- (a) for “An authority” substitute “The Council”,
 (b) for “the Secretary of State” (in each place it appears) substitute “the
 Welsh Ministers”, and 30
 (c) for “the Comptroller and Auditor General” substitute “the Auditor
 General for Wales”.
- (5) In sub-paragraph (4) –
- (a) for “The Comptroller and Auditor General” substitute “The Auditor
 General for Wales”, and 35
 (b) for “Parliament” substitute “the Assembly”.
- (6) In sub-paragraph (5) –
- (a) for “an authority” substitute “the Council”, and
 (b) in paragraph (a), for “the authority” substitute “the Council”.
- 35 (1) Paragraph 19 (reports etc.) is amended as follows. 40
- (2) In sub-paragraph (1) –
- (a) for “an authority” substitute “the Welsh Council”, and

- (b) for “the Secretary of State” substitute “the Welsh Ministers”.
- (3) In sub-paragraph (2) –
 - (a) for “An Authority” substitute “The Council”,
 - (b) for “the Secretary of State” substitute “the Welsh Ministers”, and
 - (c) for “he” substitute “they”. 5
- (4) In sub-paragraph (3), for “the authority” substitute “the Council”.
- 36 In paragraph 20 (application of seal) –
 - (a) for “an authority” substitute “the Welsh Council”, and
 - (b) in paragraphs (a) and (b), for “the authority” substitute “the Council”. 10
- 37 In paragraph 21 (evidence), for “an authority” substitute “the Welsh Council”.
- 38 For the title to Schedule 1 substitute “The Welsh Council”.

Amendments to the Health and Social Care Act 2008

- 39 The Health and Social Care Act 2008 is amended as follows. 15
- 40 (1) In section 124 (regulation of social care workers) –
 - (a) in subsection (1), for “appropriate Minister” in each place it appears substitute “Welsh Ministers”,
 - (b) in that subsection, for “their regulation” substitute “the regulation of social care workers”, and
 - (c) in subsection (3), omit the definition of “the appropriate Minister”. 20
- (2) For the title to that section substitute “Regulation of social care workers: Wales”.
- 41 Section 125 (standard of proof in proceedings relating to registration of social care worker) – 25
 - (a) in subsection (2), for “a committee of a Council, a Council itself or any officer of a Council” substitute “the Care Council for Wales, a committee of the Council or any officer of the Council”, and
 - (b) in subsection (3), omit paragraph (a).
- 42 (1) Section 126 (education and training of approved mental health professionals) is amended as follows. 30
- (2) In subsection (1) –
 - (a) for “appropriate Minister” substitute “Welsh Ministers”, and
 - (b) omit “the General Social Care Council or”.
- (3) In subsection (4), omit the definition of “the appropriate Minister”. 35
- (4) For the title to section 126 substitute “Education and training of approved mental health professionals: Wales”.
- 43 (1) Schedule 9 (regulation of social care workers) is amended as follows.
- (2) In paragraph 1 (interpretation), for the definition of “the appropriate Council” substitute – 40
 - ““the Council” means the Care Council for Wales.”

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| (3) In paragraph 2 (matters generally within the scope of regulations), in paragraphs (a) and (h), for “the appropriate Council” substitute “the Council”. | 5 |
| (4) In paragraph 5 (payments), in paragraph (b), for “the appropriate Council” substitute “the Council”. | 5 |
| (5) In paragraph 6 (sub-delegation), in paragraph (a), omit the words from “Ministers of the Crown” to “Welsh Ministers, on”. | 5 |
| (6) In paragraph 8 (matters outside the scope of regulations) – | 10 |
| (a) in sub-paragraph (1), omit “the General Social Care Council or”, | 10 |
| (b) in sub-paragraph (2), for “either of those Councils” substitute “the Council”, and | 10 |
| (c) in that sub-paragraph, for “that Council” substitute “the Council”. | 10 |
| (7) Omit paragraph 9 (preliminary procedure for making regulations: England). | 15 |
| (8) For the title to that Schedule substitute “Regulation of social care workers: Wales”. | 15 |

Amendments to other Acts

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| 44 | In the following provisions, omit the entry for the General Social Care Council – | 20 |
| | (a) the Schedule to the Public Bodies (Admission to Meetings Act 1960), | 20 |
| | (b) Schedule 2 to the Parliamentary Commissioner Act 1967, | 20 |
| | (c) Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975, | 25 |
| | (d) Part 2 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975, and | 25 |
| | (e) Part 6 of Schedule 1 to the Freedom of Information Act 2000. | 25 |
| 45 | In section 343 of the Income Tax (Earning and Pensions) Act 2003 (deductions for professional membership fees), in paragraph 1 of the Table in subsection (2), omit sub-paragraph (o). | 30 |
| 46 | In section 41 of the Safeguarding Vulnerable Groups Act 2006 (registers: duty to refer), in entry number 8 in the table in subsection (7) – | 30 |
| | (a) in the first column, after “social care workers” insert “in Wales”, and | 30 |
| | (b) in the second column, for the words from “General” to the end substitute “Care Council for Wales”. | 30 |

Savings

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| 47 | Section 196 does not affect the validity of anything done by or in relation to the General Social Care Council before the commencement of subsection (1) of that section. | 35 |
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PART 2

THE HEALTH AND CARE PROFESSIONS COUNCIL

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| 48 | (1) A reference in any instrument or document to the Health Professions Council is to be read, in relation to any time after the commencement of section 198(1), as a reference to the Health and Care Professions Council. | 40 |
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- (2) A reference in this Act or any other enactment, or in any other instrument or document, to the Health and Care Professions Council is to be read, in relation to any time before the commencement of section 198(1), as a reference to the Health Professions Council.
- (3) In sub-paragraph (2), “enactment” means an enactment contained in, or in an instrument made under –
- (a) an Act of Parliament,
 - (b) an Act of the Scottish Parliament,
 - (c) an Act or Measure of the National Assembly for Wales, or
 - (d) Northern Ireland legislation.
- 49 In Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975, at the appropriate place insert –
“The Health and Care Professions Council”.
- 50 In Part 2 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975, at the appropriate place insert –
“The Health and Care Professions Council”.
- 51 In the following provisions, for “the Health Professions Council” substitute “the Health and Care Professions Council” –
- (a) Part 6 of Schedule 1 to the Freedom of Information Act 2000,
 - (b) section 25(3)(gb) of the National Health Service Reform and Health Care Professions Act 2002,
 - (c) section 4(4)(a) of the Health (Wales) Act 2003,
 - (d) paragraph 1(f) of the Table in section 343(2) of the Income Tax (Earning and Pensions) Act 2003,
 - (e) paragraph 16 of Schedule 3 to the Safeguarding Vulnerable Groups Act 2006, and
 - (f) sections 17(5)(c)(viii) and 30A(5) of the Protection of Vulnerable Groups (Scotland) Act 2007.
- 52 In section 257(3) of the Armed Forces Act 2006 (definition of “registered social worker”), for paragraph (a) substitute –
“(a) the Health and Care Professions Council;”.
- 53 After section 30A(5) of the Protection of Vulnerable Groups (Scotland) Act 2007, insert –
“(6) The reference in subsection (5) to the Health and Care Professions Council does not include a reference to that body in so far as it has functions relating to the social work profession in England or social care workers in England (each of those expressions having the same meaning as in section 60 of the Health Act 1999).”
- 54 In Part 1 of the Schedule to the National Assembly for Wales (Disqualification) Order 2006 (S.I. 2006/3335) (bodies of which all members are disqualified), at the appropriate place insert –
“Health and Care Professions Council;”.

PART 3

THE PROFESSIONAL STANDARDS AUTHORITY FOR HEALTH AND SOCIAL CARE

General

- 55 (1) A reference in any instrument or document to the Council for Healthcare Regulatory Excellence is to be read, in relation to any time after the commencement of section 206(1), as a reference to the Professional Standards Authority for Health and Social Care. 5
- (2) A reference in this Act or any other enactment, or in any other instrument or document, to the Professional Standards Authority for Health and Social Care is to be read, in relation to any time before the commencement of section 206(1), as a reference to the Council for Healthcare Regulatory Excellence. 10
- (3) In sub-paragraph (2), “enactment” means an enactment contained in, or in an instrument made under – 15
- (a) an Act of Parliament,
 - (b) an Act of the Scottish Parliament,
 - (c) an Act or Measure of the National Assembly for Wales, or
 - (d) Northern Ireland legislation.

Health Act 1999 (c. 8)

- 56 In section 60(1) of the Health Act 1999 – 20
- (a) in paragraph (c), for “the Council for Healthcare Regulatory Excellence” substitute “the Professional Standards Authority for Health and Social Care”, and
 - (b) in each of paragraphs (d) and (e), for “Council” substitute “Authority”. 25
- 57 In paragraph 7(4) of Schedule 3 to that Act, for “the Council for Healthcare Regulatory Excellence” substitute “the Professional Standards Authority for Health and Social Care”.

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

- 58 In each of the following provisions of the National Health Service Reform and Health Care Professions Act 2002, for “Council” substitute “Authority” – 30
- (a) section 25(2), (2A) and (4),
 - (b) section 26(1), (2), (3) and (4),
 - (c) section 26A(1) (in each place it appears) and (2), 35
 - (d) section 26B(1) and (4) (in each case, in each place it appears),
 - (e) section 27(1), (2), (4), (10) and (14),
 - (f) section 28(1), (2)(b), (e), (f), (g), (h) and (j), (3)(a), (b) and (d) and (4),
 - (g) section 29(4) (in each place it appears) and (7) (in each place it appears), 40
 - (h) in Schedule 7, paragraphs 2, 6(a), (b) and (c) (in each place it appears), 7, 8, 9(1) and (2), 10(1) and (2) (in each case, in each place it appears), 11(1) (in each place it appears), (2), (3) and (4), 12(1) (in each place it appears) and (2), 13, 14(1), (2), (3), (4), (7), (8) and (9), 15(1),

- (2), (3), (4) and (7)(a), 16(1), (1A)(a) and (b), (2), (3) and (4), 17 (in each place it appears), 18 and 19(1) and (2)(a) and (b),
- (i) the title of each of sections 26, 27 and 29, and
- (j) the cross-heading preceding each of paragraphs 14 and 19 of Schedule 7. 5
- 59 In sections 26(6), 27(3) and 29(6) of, and paragraphs 1 and 4 of Schedule 7 to, that Act for “The Council” substitute “The Authority”.
- 60 In section 26A(2) of, and paragraph 1 of Schedule 7 to, that Act for “Council’s” substitute “Authority’s”.
- 61 For the title to Schedule 7 substitute “The Professional Standards Authority for Health and Social Care”. 10

Other Acts, etc.

- 62 In section 36A(1)(b) of the Dentists Act 1984 (professions complementary to dentistry), for “regulated by the Council for Healthcare Regulatory Excellence under section 25” substitute “listed in section 25(3)”. 15
- 63 In each of the following provisions, for “the Council for Healthcare Regulatory Excellence” substitute “the Professional Standards Authority for Health and Social Care” –
- (a) paragraphs 1(bca) and 2(ca) of the Schedule to the Public Bodies (Admission to Meetings) Act 1960, 20
- (b) paragraph (b) of the definition of “relevant disciplinary proceedings” in section 201(4) of the National Health Service Act 2006, and
- (c) paragraph (b) of the definition of “relevant disciplinary proceedings” in section 149(4) of the National Health Service (Wales) Act 2006.
- 64 (1) In each of the following provisions, omit the entry for “The Council for Healthcare Regulatory Excellence” – 25
- (a) Schedule 1 to the Public Records Act 1958,
- (b) Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975,
- (c) Part 2 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975, 30
- (d) Part 6 of Schedule 1 to the Freedom of Information Act 2000, and
- (e) Part 1 of the Schedule to the National Assembly for Wales (Disqualification) Order 2006 (S.I. 2006/3335).
- (2) In each of the provisions listed in sub-paragraph (1), at the appropriate place insert – 35
- “The Professional Standards Authority for Health and Social Care”.

PART 4

THE OFFICE OF THE HEALTH PROFESSIONS ADJUDICATOR

Miscellaneous amendments 40

- 65 In the Schedule to the Public Bodies (Admission to Meetings) Act 1960, omit paragraphs 1(bcb) and 2(cb).

- 66 (1) Omit the entry for the Office of the Health Professions Adjudicator in each of the following –
- (a) Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975,
 - (b) Part 2 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975, 5
 - (c) Part 6 of Schedule 1 to the Freedom of Information Act 2000,
 - (d) Part 1 of the Schedule to the National Assembly for Wales (Disqualification) Order 2006 (S.I. 2006/3335), and
 - (e) the table in Article 2 of the Administrative Justice and Tribunals Council (Listed Tribunals) Order 2007 (S.I. 2007/2951). 10
- (2) In consequence of those repeals –
- (a) omit paragraphs 4(b), 5(b) and 13(b) of Schedule 10 to the Health and Social Care Act 2008 and the preceding “and” in each case, and
 - (b) omit paragraph 26(b) of that Schedule. 15
- (3) Omit paragraph 27 of Schedule 10 to the Health and Social Care Act 2008 (which inserts a reference to the OHPA in the Pharmacists and Pharmacy Technicians Order 2007, which has itself been revoked).

Amendments to the Health Act 1999 (c. 8)

- 67 (1) The Health Act 1999 is amended as follows. 20
- (2) Omit section 60(1)(f) (power to modify constitution or functions of OHPA).
- (3) In consequence of that repeal, omit paragraph 1(2) of Schedule 8 to the Health and Social Care Act 2008.
- (4) In paragraph 8(2A) of Schedule 3 (provision under section 60 as to functions relating to unfitness to practise must provide for functions to be exercised by relevant regulatory body or OHPA), omit “or the Office of the Health Professions Adjudicator”. 25
- (5) In section 60A(2) (standard of proof in fitness to practise proceedings before OHPA or regulatory bodies), omit paragraph (a) and the “or” following it.

Amendments to the National Health Service Reform and Health Care Professions Act 2002 (c. 17) 30

- 68 (1) In section 29 of the National Health Service Reform and Health Care Professions Act 2002 (reference of disciplinary cases by the Council for Healthcare Regulatory Excellence to the court), in subsection (1) –
- (a) in paragraph (c), omit “otherwise than by reason of his physical or mental health”, and
 - (b) in paragraph (f), omit the words from “, other than a direction” to the end. 35
- (2) In consequence of those repeals, omit section 118(2)(b) and (d), (5) and (6) of the Health and Social Care Act 2008. 40

Amendments to the Health Act 2006 (c. 28)

- 69 (1) Omit section 60(3)(b) of the Health Act 2006 (Appointments Commission to exercise functions of Privy Council relating to appointment of members of OHPA) and the “or” immediately preceding it.
- (2) Omit section 63(6A) and (6B) of that Act (Appointments Commission to assist OHPA with exercise of appointment functions). 5
- (3) In consequence of those repeals, omit paragraph 22 of Schedule 10 to the Health and Social Care Act 2008.

Amendments to the Health and Social Care Act 2008 (c. 14)

- 70 (1) The Health and Social Care Act 2008 is amended as follows. 10
- (2) In section 128 (interpretation), omit the definition of “the OHPA”.
- (3) In section 162 (orders and regulations), omit subsections (1)(b) and (c) and (4).
- (4) In Schedule 10 (amendments relating to Part 2 of that Act), omit paragraphs 7, 9, 14, 15 and 18. 15

Savings

- 71 (1) If abolition is to occur at a time other than immediately after the end of a financial year within the meaning of paragraphs 19 and 20 of Schedule 6 to the Health and Social Care Act 2008 (annual reports), the period that begins with the 1 April before abolition and ends with abolition is to be treated as a financial year for the purposes of those paragraphs. 20
- (2) Despite section 215(2), paragraphs 19 and 20 of that Schedule are to continue to have effect for the purpose of imposing the duties under paragraphs 19(2), (3)(b) and (4) to (6) and 20(1), (2)(b) and (3) and for the purpose of conferring the power under paragraph 20(4); and for those purposes— 25
- (a) the duties under paragraphs 19(2) and 20(1), in so far as they have not been discharged by the OHPA, must be discharged by the Secretary of State,
- (b) the duties under paragraphs 19(3)(b) and (4) and 20(2)(b) must be discharged by the Secretary of State, and 30
- (c) the power conferred by paragraph 20(4) may be exercised by giving directions of the description in question to the Secretary of State.
- (3) Subject to that, anything which the OHPA is required to do under an enactment before abolition may, in so far as it has not been done by the OHPA, be done by the Secretary of State after abolition. 35
- 72 A reference in any document to the OHPA is, so far as necessary or appropriate in consequence of section 215(1), to be read after abolition as a reference to the Secretary of State.
- 73 In paragraphs 71 and 72— 40
- “abolition” means the commencement of section 215(1);
- “enactment” includes an enactment contained in subordinate legislation (within the meaning of the Interpretation Act 1978);
- “the OHPA” means the Office of the Health Professions Adjudicator.

SCHEDULE 15

Section 216

THE NATIONAL INSTITUTE FOR HEALTH AND CARE EXCELLENCE

Membership, appointment, etc.

- 1 (1) NICE consists of—
 - (a) at least six members appointed by the Secretary of State (referred to in this Schedule as the “non-executive members”), and 5
 - (b) at least three but not more than five other members appointed by the non-executive members (referred to in this Schedule as the “executive members”).
- (2) One of the non-executive members must be appointed as the chair. 10
- (3) One of the executive members must be appointed as the chief executive; but the appointment may not be made without the approval of the Secretary of State.
- (4) The executive members are employees of NICE.
- (5) Regulations may— 15
 - (a) prescribe the number of executive members (subject to paragraph (1)(b)), and
 - (b) provide that all or any of the executive members (other than the chief executive) must hold posts of descriptions specified in the regulations. 20

Tenure of non-executive office

- 2 (1) The chair and other non-executive members—
 - (a) hold and vacate office in accordance with the terms of their appointments, but
 - (b) may resign office by giving notice to the Secretary of State. 25
- (2) The Secretary of State may remove a person from office as the chair or other non-executive member on any of the following grounds—
 - (a) incapacity,
 - (b) misbehaviour, or
 - (c) failure to carry out his or her duties as a non-executive member. 30
- (3) The Secretary of State may suspend a person from office as the chair or other non-executive member if it appears to the Secretary of State that there are or may be grounds to remove the person from office under sub-paragraph (2).
- (4) A non-executive member may not be appointed for a period of more than four years. 35
- (5) A person who ceases to be the chair or another non-executive member is eligible for re-appointment.

Suspension from non-executive office

- 3 (1) This paragraph applies where a person is suspended under paragraph 2(3).
- (2) The Secretary of State must give notice of the decision to the person; and the suspension takes effect on receipt by the person of the notice. 40

- (3) The notice may be –
 - (a) delivered in person (in which case, the person is taken to receive 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 taken to receive it on the third day after the day on which it is posted). 5
 - (4) The initial period of suspension must not exceed six months.
 - (5) The Secretary of State may at any time review the suspension.
 - (6) The Secretary of State –
 - (a) must review the suspension if requested in writing by the person to do so, but 10
 - (b) need not review the suspension less than three months after the beginning of the initial period of suspension.
 - (7) Following a review during a period of suspension, the Secretary of State may –
 - (a) revoke the suspension, or
 - (b) suspend the person for another period of not more than six months from the expiry of the current period. 15
 - (8) The Secretary of State must revoke the suspension if the Secretary of State –
 - (a) decides that there are no grounds to remove the person from office under paragraph 2(2), or 20
 - (b) decides that there are grounds to do so but does not remove the person from office under that provision.
- 4
- (1) This paragraph applies where a person is suspended from office as the chair under paragraph 2(3). 25
 - (2) The Secretary of State may appoint a non-executive member as the interim chair to exercise the chair’s functions.
 - (3) The interim chair –
 - (a) holds and vacates office in accordance with the terms of the appointment, but 30
 - (b) may resign office by giving notice in writing to the Secretary of State.
 - (4) Appointment as interim chair is for a term not exceeding the shorter of –
 - (a) the period ending with either –
 - (i) the appointment of a new chair, or
 - (ii) the revocation or expiry of the existing chair’s suspension, 35and
 - (b) the remainder of the interim chair’s term as a non-executive member.
 - (5) A person who ceases to be the interim chair is eligible for re-appointment.

Remuneration etc. of non-executive members

- 5 (1) NICE must pay to the non-executive members such remuneration and allowances as the Secretary of State may determine. 40

- (2) NICE must pay or make provision for the payment of such pensions, allowances or gratuities as the Secretary of State may determine to or in respect of any person who is or has been a non-executive member.
- (3) If a person ceases to be a non-executive member and the Secretary of State decides that there are exceptional circumstances which mean that the person should be compensated, NICE must pay compensation to the person of such amount as the Secretary of State may determine. 5

Staff

- 6 (1) NICE may appoint such persons to be employees of NICE as it considers appropriate. 10
- (2) Employees of NICE are to be paid such remuneration and allowances as NICE may determine.
- (3) Employees of NICE are to be appointed on such other terms and conditions as NICE may determine.
- (4) NICE may pay or make provision for the payment of such pensions, allowances or gratuities as it may determine to or in respect of any person who is or has been an employee of NICE. 15
- (5) Before making a determination as to remuneration, pensions, allowances or gratuities for the purposes of sub-paragraph (2) or (4), NICE must obtain the approval of the Secretary of State to its policy on that matter. 20

Committees

- 7 (1) NICE may appoint such committees and sub-committees as it considers appropriate.
- (2) A committee or sub-committee may consist of or include persons who are not members or employees of NICE. 25
- (3) NICE may pay such remuneration and allowances as it may determine to any person who –
- (a) is a member of a committee or sub-committee, but
 - (b) is not an employee of NICE,
- whether or not that person is a non-executive member of NICE. 30

Procedure

- 8 (1) NICE may regulate its own procedure.
- (2) But regulations may make provision about procedures to be adopted by NICE for dealing with conflicts of interest of members of NICE or members of a committee or sub-committee. 35
- (3) The validity of any act of NICE is not affected by any vacancy among the members or by any defect in the appointment of a member.

Exercise of functions

- 9 NICE may arrange for the exercise of its functions on its behalf by –
- (a) a non-executive member; 40

- (b) an employee (including an executive member);
- (c) a committee or sub-committee.

General powers

- 10 (1) NICE may do anything which appears to it to be necessary or expedient for the purposes of, or in connection with, the exercise of its functions. 5
- (2) But, except as provided by paragraph 11(3), NICE has no power to borrow money.
- (3) NICE may do any of the following only with the approval of the Secretary of State – 10
- (a) form, or participate in the forming of, companies,
 - (b) invest in companies (whether by acquiring assets, securities or rights or otherwise), and
 - (c) provide loans and guarantees and make other kinds of financial provision to or in respect of companies.
- (4) The approval of the Secretary of State may be given for the purposes of sub-paragraph (3) subject to such conditions as the Secretary of State thinks appropriate. 15
- (5) In this paragraph “company” has the same meaning as in the Companies Acts (see section 1(1) of the Companies Act 2006).

Finance

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- 11 (1) *The Secretary of State may make payments to NICE out of money provided by Parliament of such amounts as the Secretary of State thinks appropriate.*
- (2) Payments made under sub-paragraph (1) may be made at such times and on such conditions (if any) as the Secretary of State thinks appropriate.
- (3) The Secretary of State may lend money to NICE on such terms (including as to repayment and interest) as the Secretary of State may determine. 25

Reports

- 12 (1) As soon as practicable after the end of each financial year, NICE must prepare an annual report on how it has exercised its functions during the year. 30
- (2) NICE must –
- (a) lay a copy of the report before Parliament, and
 - (b) once it has done so, send a copy of it to the Secretary of State.
- (3) NICE must provide the Secretary of State with such other reports and information relating to the exercise of NICE’s functions as the Secretary of State may require. 35
- (4) In this paragraph and paragraph 14 “financial year” means –
- (a) the period beginning on the day on which section 216 comes into force and ending on the following 31 March;
 - (b) each successive period of 12 months. 40

Accounts

- 13 (1) NICE must keep proper accounts and proper records in relation to the accounts.
- (2) The Secretary of State may, with the approval of the Treasury, give directions to NICE as to— 5
- (a) the content and form of its accounts, and
- (b) the methods and principles to be applied in the preparation of its accounts.
- (3) In sub-paragraph (2) a reference to accounts includes NICE’s annual accounts prepared under paragraph 14 and any interim accounts prepared by virtue of paragraph 15. 10
- 14 (1) NICE must prepare annual accounts in respect of each financial year.
- (2) NICE must send copies of the annual accounts to the Secretary of State and the Comptroller and Auditor General within such period after the end of the financial year to which the accounts relate as the Secretary of State may direct. 15
- (3) The Comptroller and Auditor General must—
- (a) examine, certify and report on the annual accounts, and
- (b) lay copies of them and the report before Parliament.
- 15 (1) The Secretary of State may, with the approval of the Treasury, direct NICE to prepare accounts in respect of such period or periods as may be specified in the direction (“interim accounts”). 20
- (2) NICE must send copies of any interim accounts to the Secretary of State and the Comptroller and Auditor General within such period as the Secretary of State may direct. 25
- (3) The Comptroller and Auditor General must—
- (a) examine, certify and report on any interim accounts sent by virtue of sub-paragraph (2), and
- (b) if the Secretary of State so directs— 30
- (i) send a copy of the report on the accounts to the Secretary of State, and
- (ii) lay copies of them and the report before Parliament.

Seal and evidence

- 16 (1) The application of NICE’s seal must be authenticated by the signature of the chair or of any employee who has been authorised (generally or specifically) for that purpose. 35
- (2) A document purporting to be duly executed under NICE’s seal or to be signed on its behalf must be received in evidence and, unless the contrary is proved, taken to be so executed or signed.

Status

- 17 (1) NICE must not be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown. 40

- (2) NICE’s property must not be regarded as property of, or property held on behalf of, the Crown.

SCHEDULE 16

Section 233

PART 8: CONSEQUENTIAL AMENDMENTS

<i>Public Bodies (Admission to Meetings) Act 1960</i>	5
1 In the Schedule to the Public Bodies (Admission to Meetings) Act 1960 (bodies to which that Act applies) in paragraph 1, after paragraph (m) insert – “(n) the National Institute for Health and Care Excellence;”.	
<i>Parliamentary Commissioner Act 1967</i>	10
2 In Schedule 2 to the Parliamentary Commissioner Act 1967 (departments etc. subject to investigation) at the appropriate place insert – “National Institute for Health and Care Excellence.”	
<i>Local Government Act 1972</i>	
3 In section 113 of the Local Government Act 1972 (placing of staff of local authorities at disposal of other local authorities and health bodies) in subsection (1A) –	15
(a) after “agreement with” insert “the National Institute for Health and Care Excellence,”,	
(b) in paragraph (a), after “disposal of” insert “the National Institute for Health and Care Excellence,”, and	20
(c) in paragraph (b), after “employed by” insert “the National Institute for Health and Care Excellence,”.	
<i>House of Commons Disqualification Act 1975 (c. 24)</i>	
4 In Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975 (bodies of which all members are disqualified) at the appropriate place insert – “The National Institute for Health and Care Excellence.”	25
<i>Northern Ireland Assembly Disqualification Act 1975 (c. 25)</i>	
5 In Part 2 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (bodies of which all members are disqualified) at the appropriate place insert – “The National Institute for Health and Care Excellence.”	30
<i>Employment Rights Act 1996</i>	
6 In section 218 of the Employment Rights Act 1996 (change of employer) in subsection (10), after paragraph (cb) insert – “(cc) the National Institute for Health and Care Excellence,”.	35

Freedom of Information Act 2000

- 7 In Part 6 of Schedule 1 to the Freedom of Information Act 2000 (other public bodies and offices: general) at the appropriate place insert –
“The National Institute for Health and Care Excellence.”

International Development Act 2002 5

- 8 In Schedule 1 to the International Development Act 2002 (bodies which may enter agreements to provide international development assistance etc.) after the entry for an NHS foundation trust insert –
“The National Institute for Health and Care Excellence.”

National Health Service Act 2006 (c. 41) 10

- 9 (1) The National Health Service Act 2006 is amended as follows.
- (2) In section 9 (NHS contracts) in subsection (4), after paragraph (k) insert –
“(ka) NICE,”.
- (3) In section 71 (schemes for losses and liabilities of certain health service bodies) in subsection (2), after paragraph (d) insert –
“(da) NICE,”. 15
- (4) In section 72 (co-operation between NHS bodies) –
(a) the existing text becomes subsection (1), and
(b) after that subsection insert –
“(2) For the purposes of this section, NICE is an NHS body.” 20
- (5) In section 275 (interpretation) in subsection (1), after the definition of “NHS trust” insert –
“NICE” means the National Institute for Health and Care Excellence;”.

National Health Service (Wales) Act 2006 (c. 42) 25

- 10 In section 7 of the National Health Service (Wales) Act 2006 (NHS contracts) in subsection (4), after paragraph (k) insert –
“(ka) the National Institute for Health and Care Excellence,”.

Health and Social Care Act 2008

- 11 (1) The Health and Social Care Act 2008 is amended as follows. 30
- (2) Omit section 45 (standards set by the Secretary of State) and the preceding cross-heading.
- (3) In section 53 (information and advice given by Care Quality Commission to Secretary of State) in subsection (3) –
(a) at the end of paragraph (a) insert “or”, and
(b) omit paragraph (c) and the word “or” immediately preceding it. 35

Health Act 2009

- 12 In section 2 of the Health Act 2009 (duty to have regard to the NHS

Constitution) in subsection (2), after paragraph (d) insert—
“(da) the National Institute for Health and Care Excellence;”.

Equality Act 2010

- 13 In Part 1 of Schedule 19 to the Equality Act 2010 (bodies subject to public sector equality duty) at the end of the group of entries for bodies whose functions relate to the health service add— 5
“The National Institute for Health and Care Excellence.”

SCHEDULE 17

Section 236

THE HEALTH AND SOCIAL CARE INFORMATION CENTRE

Membership, appointment, etc. 10

- 1 (1) The Information Centre consists of—
(a) at least six members appointed by the Secretary of State (referred to in this Schedule as the “non-executive members”), and
(b) not more than five other members appointed by the non-executive members (referred to in this Schedule as the “executive members”). 15
- (2) One of the non-executive members must be appointed as the chair.
- (3) One of the executive members must be appointed as the chief executive; but the appointment may not be made without the approval of the Secretary of State.
- (4) The first chief executive is to be appointed by the Secretary of State. 20
- (5) The executive members are employees of the Information Centre.

Tenure of non-executive office

- 2 (1) The chair and other non-executive members—
(a) hold and vacate office in accordance with the terms of their appointments, but 25
(b) may resign office by giving notice to the Secretary of State.
- (2) The Secretary of State may remove a person from office as the chair or other non-executive member on any of the following grounds—
(a) incapacity,
(b) misbehaviour, or 30
(c) failure to carry out his or her duties as a non-executive member.
- (3) The Secretary of State may suspend a person from office as the chair or other non-executive member if it appears to the Secretary of State that there are or may be grounds to remove the person from office under sub-paragraph (2).
- (4) A non-executive member may not be appointed for a period of more than 35
four years.
- (5) A person who ceases to be the chair or another non-executive member is eligible for re-appointment.

Suspension from non-executive office

- 3 (1) This paragraph applies where a person is suspended under paragraph 2(3).
- (2) The Secretary of State must give notice of the decision to the person; and the suspension takes effect on receipt by the person of the notice.
- (3) The notice may be – 5
- (a) delivered in person (in which case, the person is taken to receive 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 taken to receive it on the third day after the day on which it is posted). 10
- (4) The initial period of suspension must not exceed six months.
- (5) The Secretary of State may at any time review the suspension.
- (6) The Secretary of State –
- (a) must review the suspension if requested in writing by the person to do so, but 15
- (b) need not review the suspension less than three months after the beginning of the initial period of suspension.
- (7) Following a review during a period of suspension, the Secretary of State may –
- (a) revoke the suspension, or 20
- (b) suspend the person for another period of not more than six months from the expiry of the current period.
- (8) The Secretary of State must revoke the suspension if the Secretary of State –
- (a) decides that there are no grounds to remove the person from office under paragraph 2(2), or 25
- (b) decides that there are grounds to do so but does not remove the person from office under that provision.
- 4 (1) This paragraph applies where a person is suspended from office as the chair under paragraph 2(3).
- (2) The Secretary of State may appoint a non-executive member as the interim chair to exercise the chair’s functions. 30
- (3) The interim chair –
- (a) holds and vacates office in accordance with the terms of the appointment, but
- (b) may resign office by giving notice in writing to the Secretary of State. 35
- (4) Appointment as interim chair is for a term not exceeding the shorter of –
- (a) the period ending with either –
- (i) the appointment of a new chair, or
- (ii) the revocation or expiry of the existing chair’s suspension, and 40
- (b) the remainder of the interim chair’s term as a non-executive member.
- (5) A person who ceases to be the interim chair is eligible for re-appointment.

Remuneration etc. of non-executive members

- 5 (1) The Information Centre must pay to the non-executive members such remuneration and allowances as the Secretary of State may determine.
- (2) The Information Centre must pay or make provision for the payment of such pensions, allowances or gratuities as the Secretary of State may determine to or in respect of any person who is or has been a non-executive member. 5
- (3) If a person ceases to be a non-executive member and the Secretary of State decides that there are exceptional circumstances which mean that the person should be compensated, the Information Centre must pay compensation to the person of such amount as the Secretary of State may determine. 10

Staff

- 6 (1) The Information Centre may appoint such persons to be employees of the Centre as it considers appropriate.
- (2) Employees of the Information Centre are to be paid such remuneration and allowances as the Centre may determine. 15
- (3) Employees of the Information Centre are to be appointed on such other terms and conditions as the Centre may determine.
- (4) The Information Centre may pay or make provision for the payment of such pensions, allowances or gratuities as it may determine to or in respect of any person who is or has been an employee of the Centre. 20
- (5) Before making a determination as to remuneration, pensions, allowances or gratuities for the purposes of sub-paragraph (2) or (4), the Centre must obtain the approval of the Secretary of State to its policy on that matter.

Committees

- 7 (1) The Information Centre may appoint such committees and sub-committees as it considers appropriate. 25
- (2) A committee or sub-committee may consist of or include persons who are not members or employees of the Information Centre.
- (3) The Information Centre may pay such remuneration and allowances as it may determine to any person who— 30
- (a) is a member of a committee or sub-committee, but
 - (b) is not an employee of the Centre,
- whether or not that person is a non-executive member of the Centre.

Procedure

- 8 (1) The Information Centre may regulate its own procedure. 35
- (2) The validity of any act of the Information Centre is not affected by any vacancy among the members or by any defect in the appointment of a member.

Exercise of functions

- 9 The Information Centre may arrange for the exercise of its functions on its behalf by –
- (a) a non-executive member;
 - (b) an employee (including an executive member); 5
 - (c) a committee or sub-committee.

General powers

- 10 (1) The Information Centre may do anything which appears to it to be necessary or expedient for the purposes of, or in connection with, the exercise of its functions. 10
- (2) Except as provided by paragraph 11(3), the Information Centre has no power to borrow money.
- (3) The Information Centre may do any of the following only with the approval of the Secretary of State –
- (a) form, or participate in the forming of, companies, 15
 - (b) invest in companies (whether by acquiring assets, securities or rights or otherwise), and
 - (c) provide loans and guarantees and make other kinds of financial provision to or in respect of companies.
- (4) The approval of the Secretary of State may be given for the purposes of sub-paragraph (3) subject to such conditions as the Secretary of State thinks appropriate. 20
- (5) In this paragraph “company” has the same meaning as in the Companies Acts (see section 1(1) of the Companies Act 2006).

Finance 25

- 11 (1) *The Secretary of State may make payments to the Information Centre out of money provided by Parliament of such amounts as the Secretary of State thinks appropriate.*
- (2) Payments made under sub-paragraph (1) may be made at such times and on such conditions (if any) as the Secretary of State thinks appropriate.
- (3) The Secretary of State may lend money to the Information Centre on such terms (including as to repayment and interest) as the Secretary of State may determine. 30

Reports

- 12 (1) As soon as practicable after the end of each financial year, the Information Centre must prepare an annual report on how it has exercised its functions during the year. 35
- (2) The Information Centre must –
- (a) lay a copy of the report before Parliament, and
 - (b) once it has done so, send a copy of it to the Secretary of State.

- (3) The Information Centre must provide the Secretary of State with such other reports and information relating to the exercise of the Centre’s functions as the Secretary of State may require.
- (4) In this paragraph and paragraph 14 “financial year” means –
 - (a) the period beginning on the day on which section 1 comes into force and ending on the following 31 March, and
 - (b) each successive period of 12 months.

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Accounts

- 13 (1) The Information Centre must keep proper accounts and proper records in relation to the accounts.
- (2) The Secretary of State may, with the approval of the Treasury, give directions to the Information Centre as to –
 - (a) the content and form of its accounts, and
 - (b) the methods and principles to be applied in the preparation of its accounts.
- (3) In sub-paragraph (2) a reference to accounts includes the Information Centre’s annual accounts prepared under paragraph 14 and any interim accounts prepared by virtue of paragraph 15.
- 14 (1) The Information Centre must prepare annual accounts in respect of each financial year.
- (2) The Information Centre must send copies of the annual accounts to the Secretary of State and the Comptroller and Auditor General within such period after the end of the financial year to which the accounts relate as the Secretary of State may direct.
- (3) The Comptroller and Auditor General must –
 - (a) examine, certify and report on the annual accounts, and
 - (b) lay copies of them and the report before Parliament.
- 15 (1) The Secretary of State may, with the approval of the Treasury, direct the Information Centre to prepare accounts in respect of such period or periods as may be specified in the direction (“interim accounts”).
- (2) The Information Centre must send copies of any interim accounts to the Secretary of State and the Comptroller and Auditor General within such period as the Secretary of State may direct.
- (3) The Comptroller and Auditor General must –
 - (a) examine, certify and report on any interim accounts sent by virtue of sub-paragraph (2), and
 - (b) if the Secretary of State so directs –
 - (i) send a copy of the report on the accounts to the Secretary of State, and
 - (ii) lay copies of them and the report before Parliament.

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Seal and evidence

- 16 (1) The application of the Information Centre’s seal must be authenticated by the signature of the chair or of any employee who has been authorised (generally or specifically) for that purpose.
- (2) A document purporting to be duly executed under the Information Centre’s seal or to be signed on its behalf must be received in evidence and, unless the contrary is proved, taken to be so executed or signed. 5

Status

- 17 (1) The Information Centre must not be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown. 10
- (2) The Information Centre’s property must not be regarded as property of, or property held on behalf of, the Crown.

SCHEDULE 18

Section 257

PART 9: CONSEQUENTIAL AMENDMENTS

Public Bodies (Admission to Meetings) Act 1960 15

- 1 In the Schedule to the Public Bodies (Admission to Meetings) Act 1960 (bodies to which that Act applies) in paragraph 1, after paragraph (n) (inserted by Schedule 16) insert –
“(o) the Health and Social Care Information Centre.”

Parliamentary Commissioner Act 1967 20

- 2 In Schedule 2 to the Parliamentary Commissioner Act 1967 (departments etc. subject to investigation) at the appropriate place insert –
“Health and Social Care Information Centre.”

House of Commons Disqualification Act 1975 (c. 24)

- 3 In Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975 (bodies of which all members are disqualified) at the appropriate place insert –
“The Health and Social Care Information Centre.” 25

Northern Ireland Assembly Disqualification Act 1975 (c. 25)

- 4 In Part 2 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (bodies of which all members are disqualified) at the appropriate place insert –
“The Health and Social Care Information Centre.” 30

Employment Rights Act 1996

- 5 In section 218 of the Employment Rights Act 1996 (change of employer) in 35

subsection (10), after paragraph (cc) (inserted by Schedule 16) insert –
“(cd) the Health and Social Care Information Centre.”

Freedom of Information Act 2000

- 6 In Part 6 of Schedule 1 to the Freedom of Information Act 2000 (other public bodies and offices: general) at the appropriate place insert – 5
“The Health and Social Care Information Centre.”

National Health Service Act 2006 (c. 41)

- 7 (1) The National Health Service Act 2006 is amended as follows.
- (2) In section 9 (NHS contracts) in subsection (4), after paragraph (ka) (inserted by Schedule 16) insert – 10
“(kb) the Health and Social Care Information Centre.”
- (3) In section 71 (schemes for losses and liabilities of certain health service bodies) in subsection (2), after paragraph (da) (inserted by Schedule 16) insert –
“(db) the Health and Social Care Information Centre.” 15
- (4) In section 72 (co-operation between NHS bodies), after subsection (2) (inserted by Schedule 16 of this Act) insert –
“(3) For the purposes of this section, the Health and Social Care Information Centre is an NHS body.”

National Health Service (Wales) Act 2006 (c. 42) 20

- 8 (1) The National Health Service (Wales) Act 2006 is amended as follows.
- (2) In section 7 (NHS contracts) in subsection (4), after paragraph (ka) (inserted by Schedule 16) insert –
“(kb) the Health and Social Care Information Centre.”

Health Act 2009 25

- 9 In section 2 of the Health Act 2009 (duty to have regard to the NHS Constitution), in subsection (2) after paragraph (da) (inserted by Schedule 16) insert –
“(db) the Health and Social Care Information Centre;”

Equality Act 2010 30

- 10 In Part 1 of Schedule 19 to the Equality Act 2010 (bodies subject to public sector equality duty) at the end of the group of entries for bodies whose functions relate to the health service add –
“The Health and Social Care Information Centre.”

SCHEDULE 19

Sections 258, 259 and 260

PART 10: CONSEQUENTIAL AMENDMENTS AND SAVINGS

PART 1

THE ALCOHOL EDUCATION AND RESEARCH COUNCIL

<i>Consequential amendments</i>	5
1 Omit the entry for the Alcohol Education and Research Council in each of the following –	
(a) Schedule 2 to the Parliamentary Commissioner Act 1967, and	
(b) Part 6 of Schedule 1 to the Freedom of Information Act 2000.	
2 Omit the entry in Part 3 of Schedule 1 to the House of Commons Disqualification Act 1975 for the liquidator appointed under section 2 of the Licensing (Alcohol Education and Research) Act 1981.	10
3 In consequence of the repeal made by section 258(2) –	
(a) in Schedule 2 to the Trustee Act 2000, omit paragraph 40 (and the preceding cross-heading), and	15
(b) in Schedule 3 to the Health Act 2009, omit paragraph 2 (and the preceding cross-heading).	
<i>Savings</i>	
4 (1) Anything which is in the process of being done by the Alcohol Education and Research Council under an enactment immediately before abolition may be continued by the Secretary of State.	20
(2) Anything which the Council is required to do under an enactment before abolition may, in so far as it has not been done by the Council, be done by the Secretary of State after abolition.	
(3) The Secretary of State must prepare a report on the activities of the Council during the period that begins with the 1 April before abolition and ends with abolition.	25
(4) In this paragraph –	
“abolition” means the commencement of section 258(1);	
“enactment” includes an enactment contained in subordinate legislation (within the meaning of the Interpretation Act 1978).	30

PART 2

THE APPOINTMENTS COMMISSION

<i>Consequential amendments</i>	
5 (1) Omit the entry for the Appointments Commission in each of the following –	35
(a) Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975,	
(b) Part 2 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975, and	

- (c) Part 6 of Schedule 1 to the Freedom of Information Act 2000.
- (2) In consequence of those repeals, in Schedule 8 to the Health Act 2006, omit paragraphs 4, 5 and 45(3) (and the cross-heading preceding each of paragraphs 4 and 5).
- 6 Omit paragraph 1A(4) of Schedule 1 (membership of governing Council) to each of the following – 5
- (a) the Medical Act 1983,
 - (b) the Dentists Act 1984,
 - (c) the Opticians Act 1989,
 - (d) the Osteopaths Act 1993, and 10
 - (e) the Chiropractors Act 1994.
- 7 In consequence of the repeal made by section 259(2) –
- (a) in Schedule 1 to the National Health Service (Consequential Provisions) Act 2006, omit paragraphs 284 to 286,
 - (b) in Schedule 5 to the Health and Social Care Act 2008, omit 15 paragraphs 79 and 80 (and the preceding cross-heading),
 - (c) in Schedule 10 to that Act, omit paragraphs 20 to 23 (and the preceding cross-heading), and
 - (d) in Schedule 3 to the Health Act 2009, omit paragraph 8 (and the 20 preceding cross-heading).

Savings

- 8 (1) Anything which is in the process of being done by the Appointments Commission under an enactment immediately before abolition may be continued by the Secretary of State.
- (2) If abolition is to occur at a time other than immediately after the end of a financial year within the meaning of paragraph 22 of Schedule 4 to the Health Act 2006 (accounts), the period that begins with the 1 April before abolition and ends with abolition is to be treated as a financial year for the purposes of that paragraph. 25
- (3) Despite section 259(2), paragraph 22 of that Schedule is to continue to have effect for the purpose of imposing the duties under sub-paragraphs (2), (3)(b) and (4) of that paragraph; and for that purpose – 30
- (a) the duty under sub-paragraph (2) of that paragraph, in so far as it has not been discharged by the Commission, must be discharged by the Secretary of State, and 35
 - (b) the duty under sub-paragraph (3)(b) of that paragraph must be discharged by the Secretary of State.
- (4) Subject to that, anything which the Commission is required to do under an enactment before abolition may, in so far as it has not been done by the Commission, be done by the Secretary of State after abolition. 40
- (5) In this paragraph –
“abolition” means the commencement of section 259(1);
“enactment” includes an enactment contained in subordinate legislation (within the meaning of the Interpretation Act 1978).

PART 3

THE NATIONAL INFORMATION GOVERNANCE BOARD FOR HEALTH AND SOCIAL CARE

Consequential amendments

- | | | |
|----|--|----|
| 9 | (1) Omit the entry for the National Information Governance Board for Health and Social Care in each of the following – | 5 |
| | (a) Schedule 2 to the Parliamentary Commissioner Act 1967, | |
| | (b) Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975, and | |
| | (c) Part 6 of Schedule 1 to the Freedom of Information Act 2000. | |
| | (2) In consequence of those repeals, in Schedule 14 to the Health and Social Care Act 2008, omit paragraphs 2 to 4 (and the cross-heading preceding each of those paragraphs). | 10 |
| 10 | (1) In section 271 of the National Health Service Act 2006 (territorial limit of exercise of functions), in subsection (3), omit paragraph (fa). | |
| | (2) In consequence of that repeal, in Schedule 14 to the Health and Social Care Act 2008, omit paragraph 5 (and the preceding cross-heading). | 15 |
| 11 | In consequence of the repeal made by section 260(2), omit sections 157(1) and 158 of the Health and Social Care Act 2008. | |

Savings

- | | | |
|----|---|----|
| 12 | (1) Anything which is in the process of being done by the National Information Governance Board for Health and Social Care under an enactment immediately before abolition may be continued by the Secretary of State. | 20 |
| | (2) Despite section 260(2), section 250D of the National Health Service Act 2006 (annual report) is to continue to have effect for the purpose of imposing the duty under subsection (1)(a); and for that purpose – | 25 |
| | (a) if abolition is to occur at a time other than immediately after the end of a reporting year within the meaning of that section, the period that begins with the 1 April before abolition and ends with abolition is to be treated as a reporting year for the purposes of that section, and | |
| | (b) the duty under subsection (1)(a) of that section must be discharged by the Secretary of State. | 30 |
| | (3) Anything which the Board is required to do under an enactment before abolition may, in so far as it has not been done by the Board, be done by the Secretary of State after abolition. | |
| | (4) In this paragraph – | 35 |
| | “abolition” means the commencement of section 260(1); | |
| | “enactment” includes an enactment contained in subordinate legislation (within the meaning of the Interpretation Act 1978). | |

SCHEDULE 20

Section 271

AMENDMENTS RELATING TO RELATIONSHIPS BETWEEN THE HEALTH SERVICES

National Health Service (Scotland) Act 1978 (c. 29)

- 1 The National Health Service (Scotland) Act 1978 is amended as follows.
- 2 (1) Section 17A (NHS contracts) is amended as follows. 5
 - (2) In subsection (2) –
 - (a) after paragraph (c) insert –
“(ca) the Scottish Ministers;”
 - (b) for paragraph (f) substitute –
“(f) Local Health Boards established under section 11 of
the National Health Service (Wales) Act 2006;” 10
 - (c) for paragraph (ff) substitute –
 - (fa) Special Health Authorities established under section
28 of the National Health Service Act 2006;
 - (fb) Special Health Authorities established under section
22 of the National Health Service (Wales) Act 2006;” 15
 - (d) omit paragraph (h),
 - (e) before paragraph (k) insert –
 - (ja) the National Health Service Commissioning Board;
 - (jb) commissioning consortia established under section
14D of the National Health Service Act 2006;” 20
 - (f) in paragraph (k), for “section 5 of the National Health Service and
Community Care Act 1990” substitute “section 18 of the National
Health Service (Wales) Act 2006”,
 - (g) omit paragraph (ka), 25
 - (h) after paragraph (m) insert –
“(ma) the Welsh Ministers;”
 - (i) after paragraph (p) omit the “and,”
 - (j) after paragraph (q) insert –
 - (r) the National Institute for Health and Care Excellence; 30
and
 - (s) the Health and Social Care Information Centre.”
 - (3) After subsection (10) insert –
 - “(11) Subsection (12) applies where the Secretary of State or a body
mentioned in subsection (2)(fa), (ja), (jb), (r) or (s) is a party or
prospective party to an arrangement or proposed arrangement
which –
 - (a) falls within subsection (1); and
 - (b) also falls within the definition of NHS contract in section 9 of
the National Health Service Act 2006. 40
 - (12) Subsections (4) to (9) shall apply in relation to that arrangement or
proposed arrangement (except in so far as it relates to reserved
matters within the meaning of the Scotland Act 1998) with the
substitution for references to the Secretary of State of references to
the Scottish Ministers and the Secretary of State acting jointly. 45

-
- (13) Subsection (14) applies where the Welsh Ministers are, or a body mentioned in subsection (2)(f), (fb), or (k) is, a party or prospective party to an arrangement or proposed arrangement which –
- (a) falls within subsection (1); and
 - (b) also falls within the definition of NHS contract in section 7 of the National Health Service (Wales) Act 2006. 5
- (14) Subsections (4) to (9) shall apply in relation to that arrangement or proposed arrangement with the substitution for references to the Secretary of State –
- (a) in so far as the arrangement or proposed arrangement relates to reserved matters within the meaning of the Scotland Act 1998, references to the Secretary of State and the Welsh Ministers acting jointly, and 10
 - (b) for all other purposes, references to the Scottish Ministers and Welsh Ministers acting jointly.” 15
- 3 (1) Section 17C (personal medical or dental services) is amended as follows.
- (2) In subsection (5) –
- (a) in paragraph (a), for the words from “the Board by” to the end substitute “the Board by a Local Health Board”, and
 - (b) in paragraph (b), for the words from “exercisable by” to “the Authority” substitute “exercisable by a Local Health Board in relation to an agreement made under section 50 of the National Health Service (Wales) Act 2006 to be exercisable on behalf of the Local Health Board”. 20
- (3) In subsection (6), for the first definition substitute – 25
- ““Local Health Board” means a Local Health Board established under section 11 of the National Health Service (Wales) Act 2006;”.
- (4) In consequence of the amendments made by sub-paragraphs (2) and (3), omit paragraph 12 of Schedule 3 to the National Health Service Reform and Healthcare Professions Act 2002, and the cross-heading which precedes it. 30
- 4 In section 17D (persons with whom agreements under section 17C may be made), in subsection (2), in paragraph (b) of the definition of “NHS employee” –
- (a) in sub-paragraph (ii) omit “a Primary Care Trust or”, 35
 - (b) in sub-paragraph (iii) –
 - (i) after “NHS trust” insert “within the meaning of the National Health Service Act (Wales) 2006”, and
 - (c) omit the words from “and in this paragraph” to the end.
- National Health Service Act 2006 (c. 41)* 40
- 5 The National Health Service Act 2006 is amended as follows.
- 6 In section 9 (NHS contracts), in subsection (4) after paragraph (n) insert –
- “(na) the Scottish Ministers,
 - (nb) Healthcare Improvement Scotland.”.
- 7 After section 10 (provision about NHS contracts entered into by a body in 45

Northern Ireland) insert –

“10A Provision for bodies in Scotland

- (1) Subsection (2) applies where the Scottish Ministers are, or a body mentioned in paragraph (f), (h), (l) or (nb) of section 9(4) is, a party or prospective party to an arrangement or proposed arrangement which – 5
- (a) falls within the definition of NHS contract in section 9(1), and
 - (b) also falls within the definition of NHS contract in section 17A of the National Health Service (Scotland) Act 1978.
- (2) Subsections (5) to (13) of section 9 apply in relation to the arrangement or proposed arrangement with the substitution for references to the Secretary of State of references to the Secretary of State and the Scottish Ministers acting jointly.” 10
- 8 (1) In section 66 (intervention orders), for subsection (1) substitute –
- “(1) This section applies to – 15
- (a) NHS trusts, and
 - (b) Special Health Authorities.”
- (2) Until the commencement of section 29 of this Act, subsection (1) of section 66 of the National Health Service Act 2006 has effect as if it included a reference to Primary Care Trusts. 20
- 9 In section 67 (effect of intervention orders), in subsection (1) –
- (a) in paragraph (a) omit “or Local Health Board, or a member of the board of directors of an NHS trust”, and
 - (b) in paragraph (b) – 25
 - (i) omit “or Local Health Board,” and
 - (ii) in that paragraph omit “, or an executive director of an NHS trust”.
- 10 (1) In section 68 (default powers), for subsection (1) substitute –
- “(1) This section applies to – 30
- (a) NHS trusts established under section 25, and
 - (b) Special Health Authorities.”
- (2) Until the commencement of section 29 of this Act, subsection (1) of section 68 of the National Health Service Act 2006 has effect as if it included a reference to Primary Care Trusts.
- 11 In section 78 (directed partnership arrangements), in subsection (3) – 35
- (a) omit paragraph (c) and the “and” which follows it, and
 - (b) omit paragraph (d).

National Health Service (Wales) Act 2006 (c. 42)

- 12 The National Health Service (Wales) Act 2006 is amended as follows.
- 13 In section 7 (NHS contracts), in subsection (4) – 40
- (a) omit paragraph (a),
 - (b) omit paragraph (b),

- (c) before paragraph (c) insert—
 “(ba) the National Health Service Commissioning Board,
 (bb) a commissioning consortium,”
- (d) omit paragraph (j), and
- (e) after paragraph (n) insert— 5
 “(na) the Scottish Ministers,
 (nb) Healthcare Improvement Scotland.”
- 14 After section 8 insert—
- “8A Provision for bodies in Scotland**
- (1) Subsection (2) applies where the Scottish Ministers are, or a body mentioned in paragraph (f), (h), (l) or (nb) of section 7(4) is, a party or prospective party to an arrangement or proposed arrangement which— 10
 (a) falls within the definition of NHS contract in section 7(1), and
 (b) also falls within the definition of NHS contract in section 17A of the National Health Service (Scotland) Act 1978. 15
- (2) Subsections (5) to (13) of section 7 apply in relation to the arrangement or proposed arrangement with the substitution for references to the Welsh Ministers of references to the Welsh Ministers and the Scottish Ministers acting jointly.” 20
- 15 In section 10 (Welsh Ministers’ arrangements with other bodies), in subsection (4) omit paragraph (b).
- 16 In section 13 (exercise of Local Health Board functions), in subsection (3)—
 (a) omit paragraph (a), and
 (b) before paragraph (b) insert— 25
 “(aa) the National Health Service Commissioning Board,
 (ab) commissioning consortia.”
- 17 In section 17 (plans for improving health etc), in subsection (6)—
 (a) in paragraph (g) — 30
 (i) after “between” insert “the National Health Service Commissioning Board, commissioning consortia,”
 (ii) omit “Strategic Health Authorities,”
 (iii) omit “Primary Care Trusts,” and
 (iv) for “section 24” substitute “section 13O (the Board’s business plan) or 14Y (consortia’s commissioning plans),” and 35
 (b) in paragraph (h) —
 (i) after “provision by” insert “the National Health Service Commissioning Board, commissioning consortia,”
 (ii) omit “Strategic Health Authorities,”
 (iii) omit “Primary Care Trusts,” and 40
 (iv) for “section 24” substitute “section 13O (the Board’s business plan) or 14Y (consortia’s commissioning plans)”.
- 18 In section 22 (special health authorities), omit subsection (6).

-
- 19 In section 26 (intervention orders), in subsection (1) after “other than” insert “the National Health Service Commissioning Board, commissioning consortia and”.
- 20 In section 27 (effect of intervention orders), in subsection (1) –
(a) omit “Strategic Health Authority,” in each place it occurs, and 5
(b) omit “Primary Care Trust,” in each place it occurs.
- 21 In section 28 (default powers), in subsection (1) after “other than” insert “the National Health Service Commissioning Board, commissioning consortia and”.
- 22 In section 34 (power of local authorities to make payments), in subsection (1) – 10
(a) after “payments to” insert “the National Health Service Commissioning Board, a commissioning consortium”,
(b) omit “a Strategic Health Authority,”, and
(c) omit “a Primary Care Trust”. 15
- 23 In section 36 (directed partnership arrangements), in subsection (3) –
(a) omit paragraph (a), and
(b) omit paragraph (b).
- 24 (1) Section 38 (supply of goods and services by the Welsh Ministers) is amended as follows. 20
(2) In subsection (3) –
(a) in paragraph (a) omit “or by a Primary Care Trust”, and
(b) in paragraph (b) omit “, a Primary Care Trust”.
(3) In subsection (6) omit “, a Primary Care Trust” in each place it occurs.
(4) In subsection (7), in paragraph (d) omit “, Primary Care Trusts”. 25
- 25 In section 39 (conditions of supply under section 38), in subsection (3), omit “Primary Care Trusts,”.
- 26 In section 41 (duty to provide primary medical services), in subsection (4) –
(a) after “other Local Health Board” insert “and the National Health Service Commissioning Board”, and 30
(b) omit “and each Primary Care Trust”.
- 27 (1) Section 51 (persons with whom agreements for provision of primary medical services may be made) is amended as follows.
(2) In subsection (1)(g), omit “Primary Care Trust or”.
(3) In subsection (3), in paragraph (b) of the definition of “NHS employee”, omit “Primary Care Trust or”. 35
- 28 In section 56 (primary dental services), in subsection (4) –
(a) after “other Local Health Board” insert “and the National Health Service Commissioning Board”, and
(b) omit “and each Primary Care Trust”. 40
- 29 (1) Section 65 (persons with whom agreements for provision of primary dental services may be made) is amended as follows.

- (2) In subsection (1)(g), omit “Primary Care Trust or”.
- (3) In subsection (3), in paragraph (b) of the definition of “NHS employee”, omit “Primary Care Trust or”.
- 30 In section 106 (provision about regulations under section 105), in subsection (2) – 5
- (a) omit paragraph (e), and
- (b) after paragraph (e) insert –
- “(f) a list corresponding to a list mentioned in any of paragraphs (a) to (d) prepared by the National Health Service Commissioning Board under or by virtue of the National Health Service Act 2006,” 10
- 31 (1) Section 115 (national disqualification) is amended as follows.
- (2) In subsection (1) –
- (a) omit paragraph (e),
- (b) after that paragraph insert – 15
- “(f) the lists corresponding to the lists mentioned in paragraphs (a) to (d) prepared by the National Health Service Commissioning Board under or by virtue of the National Health Service Act 2006,”
- (c) after “such lists prepared by each Local Health Board” insert “and the National Health Service Commissioning Board”, and 20
- (d) omit “and each Primary Care Trust”.
- (3) In subsection (6) –
- (a) in paragraph (a) –
- (i) omit “or Primary Care Trust”, and 25
- (ii) before “may include” insert “or the National Health Service Commissioning Board”, and
- (b) in paragraph (b) –
- (i) omit “and each Primary Care Trust”, and
- (ii) after “included” insert “, and the National Health Service Commissioning Board,”. 30
- 32 In section 131 (payment of travelling expenses), in paragraph (c) omit “, and, in such cases as may be prescribed, to a Primary Care Trust,”.
- 33 In section 144 (persons and bodies about which provision is made), in subsection (2) for “section 22(6)” substitute “section 206(1)”. 35
- 34 In section 161 (transfers of trust property), in subsection (2)(c) –
- (a) after “for” insert “the National Health Service Commissioning Board or a commissioning consortium,”, and
- (b) omit “a Primary Care Trust,”
- 35 (1) Section 162 (transfer of functions and property to or from special trustees) is amended as follows. 40
- (2) In subsection (1) –
- (a) after the first “by” insert “the National Health Service Commissioning Board, a commissioning consortium,”, and
- (b) omit “a Primary Care Trust,”. 45

- (3) In subsection (3)(a) –
- (a) after “for” insert “the National Health Service Commissioning or a commissioning consortium”, and
 - (b) omit “a Primary Care Trust”.
- 36 In section 181 (payment for medical examination before application for admission to hospital under the Mental Health Act), in subsection (2)(b) – 5
- (a) omit “a Primary Care Trust”, and
 - (b) before “NHS trust” insert “an”.
- 37 In section 197 (university clinical teaching and research), in subsection (2)(a) – 10
- (a) omit “a Strategic Health Authority”, and
 - (b) omit “Primary Care Trust”.
- 38 (1) In section 206 (interpretation), in subsection (1) –
- (a) before the definition of “dental practitioner” insert – 15
 - ““commissioning consortium” means a body established under section 14D of the National Health Service Act 2006,”
 - (b) after the definition of “modifications” insert –
 - ““NHS body” means –
 - (a) a Special Health Authority, 20
 - (b) an NHS trust,
 - (c) an NHS foundation trust,
 - (d) a Local Health Board,
 - (e) the National Health Service Commissioning Board, and 25
 - (f) a commissioning consortium.”
 - (c) omit the definition of “Primary Care Trust”, and
 - (d) omit the definition of “Strategic Health Authority”.
- (2) Until the commencement of section 29 of this Act, the definition of “NHS body” in section 206(1) of the National Health Service (Wales) Act 2006 has effect as if it included a reference to a Primary Care Trust. 30
- 39 In Schedule 2 (Local Health Boards), in paragraph 9 –
- (a) omit “Strategic Health Authorities and”,
 - (b) omit “under paragraph 7(8) of Schedule 2 to the National Health Service Act 2006 (c. 41) and”, and 35
 - (c) for “that Act” substitute “the National Health Service Act 2006”.
- 40 (1) Schedule 3 (NHS trusts) is amended as follows.
- (2) In paragraph 5(1)(f) omit “Primary Care Trust”.
 - (3) In paragraph 6 –
 - (a) omit “Strategic Health Authority,” in each place it occurs, and 40
 - (b) omit “, Primary Care Trust” in each place it occurs.
 - (4) In paragraph 7, in sub-paragraph (3) omit “Strategic Health Authority”.
 - (5) In paragraph 8 omit “, Primary Care Trust” in each place it occurs.
 - (6) In paragraph 9 –

-
- (a) in sub-paragraph (1) –
 - (i) omit “a Strategic Health Authority,”, and
 - (ii) omit “a Primary Care Trust,”
 - (b) in sub-paragraph (3) –
 - (i) omit “Strategic Health Authority,”, and 5
 - (ii) omit “Primary Care Trust,”
 - (c) in sub-paragraph (6) –
 - (i) omit “a Strategic Health Authority,”, and
 - (ii) omit “a Primary Care Trust,”, and
 - (d) in sub-paragraph (7) – 10
 - (i) omit “Strategic Health Authority,” in each place it occurs,
 - (ii) omit “or belong to a Primary Care Trust”, and
 - (iii) omit “Primary Care Trust,”.
 - (7) In paragraph 18 –
 - (a) omit “Strategic Health Authority,”, and 15
 - (b) omit “Primary Care Trust,”.
 - (8) In paragraph 30 –
 - (a) omit “Strategic Health Authority,”, and
 - (b) omit “Primary Care Trust,”.
 - 41 (1) Schedule 5 (Special Health Authorities) is amended as follows. 20
 - (2) In paragraph 3 –
 - (a) in sub-paragraph (8) –
 - (i) omit “or to a Strategic Health Authority”, and
 - (ii) omit “, a Strategic Health Authority”, and
 - (b) in sub-paragraph (12) – 25
 - (i) in paragraph (a) omit “or of a Strategic Health Authority”, and
 - (ii) in paragraph (b) omit “or by a Strategic Health Authority”.
 - (3) In paragraph 13, for “a Strategic Health Authority” substitute “the National Health Service Commissioning Board”. 30
 - 42 (1) Schedule 10 (further provision about Community Health Councils) is amended as follows.
 - (2) In paragraph 2 –
 - (a) omit “, Strategic Health Authorities” in each place it occurs, and
 - (b) omit “, Primary Care Trusts” in each place it occurs. 35
 - (3) In paragraph 3 –
 - (a) omit sub-paragraph (b), and
 - (b) omit sub-paragraph (c).

Health and Personal Social Services (Northern Ireland) Order 1991

- 43 (1) Article 8 of the Health and Personal Social Services (Northern Ireland) Order 1991 (health and social services contracts) is amended as follows. 40
 - (2) In paragraph (2) –

- (a) after sub-paragraph (h) insert –
 “(ha) Healthcare Improvement Scotland,”
 - (b) in sub-paragraph (g) –
 - (i) omit paragraph (i),
 - (ii) omit paragraph (ii), and
 - (iii) omit paragraph (iii),
 - (c) after that sub-paragraph insert –
 - “(ga) the National Health Service Commissioning Board;
 - (gb) commissioning consortia established under section 14D of the National Health Service Act 2006;
 - (gc) Special Health Authorities established under section 28 of that Act;
 - (gd) Special Health Authorities established under section 22 of the National Health Service (Wales) Act 2006;
 - (ge) Local Health Boards established under section 11 of that Act;
 - (gf) NHS trusts established under section 18 of that Act;
 - (gg) Healthcare Improvement Scotland established under section 10A of the National Health Service (Scotland) Act 1978;”
 - (d) after sub-paragraph (i) insert –
 - “(ia) the National Institute for Health and Care Excellence;
 - (ib) the Health and Social Care Information Centre;”
- (3) In paragraph (10) for “paragraph 2(g), (h), (i) or (j)” substitute “any of sub-paragraphs (g) to (gg), (h), (ha), (ia), (ib) and (j) of paragraph (2)”.

SCHEDULE 21

Section 274

PROPERTY TRANSFER SCHEMES

<i>Transferor</i>	<i>Permitted transferees</i>
A Primary Care Trust	The Secretary of State
	The National Health Service Commissioning Board
	A commissioning consortium
	A local authority
	The Care Quality Commission
	Monitor
	A Special Health Authority

<i>Transferor</i>	<i>Permitted transferees</i>	
A Strategic Health Authority	Any public authority which provides services as part of the health service in England	
	Any other person who provides services as part of the health service in England and consents to the transfer	5
	A qualifying company	
	Any person with whom the Secretary of State has made, or has decided to make, an agreement under section 12ZA(1) of the Mental Health Act 1983	10
	The Secretary of State	
	The National Health Service Commissioning Board	15
	A commissioning consortium	
	A local authority	
	The Care Quality Commission Monitor	
	A Special Health Authority	20
The Special Health Authority known as the National Institute for Health and Clinical Excellence	Any public authority which provides services as part of the health service in England	
	Any other person who provides services as part of the health service in England and consents to the transfer	25
	A qualifying company	
	Any person with whom the Secretary of State has made, or has decided to make, an agreement under section 12ZA(1) of the Mental Health Act 1983	30
	The National Institute for Health and Care Excellence (established under section 216)	
	The Health and Social Care Information Centre (established under section 236)	35
The Special Health Authority known as the National Health Service Institute for Innovation and Improvement	The National Health Service Commissioning Board	40

<i>Transferor</i>	<i>Permitted transferees</i>	
The Special Health Authority known as the National Patient Safety Agency	The National Health Service Commissioning Board	
	The Health and Social Care Information Centre (established under section 236)	5
The Appointments Commission	A Minister of the Crown	
The General Social Care Council	The Secretary of State	
	The Health and Care Professions Council	
	A person authorised by the Secretary of State under subsection (5)(b) of section 67 of the Care Standards Act 2000 to exercise functions of the Secretary of State under that section	10
	Any other person who carries on activities in connection with social work or social care work	15
The Health Protection Agency	The Secretary of State	
The Secretary of State	The National Health Service Commissioning Board	20

SCHEDULE 22

Section 275

STAFF TRANSFER SCHEMES

<i>Transferor</i>	<i>Permitted transferees</i>	
Any Primary Care Trust	The Secretary of State	
	The National Health Service Commissioning Board	25
	A commissioning consortium	
	A local authority	
	The Care Quality Commission	
	A Special Health Authority	30
	Any public authority which exercises functions in relation to health and is prescribed in regulations	

<i>Transferor</i>	<i>Permitted transferees</i>	
Any Strategic Health Authority	A qualifying company	
	Any person with whom the Secretary of State has made, or has decided to make, an agreement under section 12ZA(1) of the Mental Health Act 1983	5
	The Secretary of State	
	The National Health Service Commissioning Board	
	A commissioning consortium	10
The Special Health Authority known as National Institute for Health and Clinical Excellence	The Care Quality Commission Monitor	
	A Special Health Authority	
	Any public authority which exercises functions in relation to health and is prescribed in regulations	15
The Special Health Authority known as the Health and Social Care Information Centre	A qualifying company	
	Any person with whom the Secretary of State has made, or has decided to make, an agreement under section 12ZA(1) of the Mental Health Act 1983	20
The Special Health Authority known as the National Institute for Health and Innovation and Improvement	The National Institute for Health and Care Excellence (established under section 216)	
	The Health and Social Care Information Centre (established under section 236)	25
The Special Health Authority known as the National Patient Safety Agency	The National Health Service Commissioning Board	
	The National Health Service Commissioning Board	30
The Appointments Commission	The Health and Social Care Information Centre	
	A Minister of the Crown	35
The General Social Care Council	The Secretary of State	
	The Health and Care Professions Council	

<i>Transferor</i>	<i>Permitted transferees</i>	
	A person authorised by the Secretary of State under subsection (5)(b) of section 67 of the Care Standards Act 2000 to exercise functions of the Secretary of State under that section	5
	Any other person who carries on activities in connection with social work or social care work	
The Health Protection Agency	The Secretary of State	10
The Secretary of State	National Health Service Commissioning Board The Care Quality Commission Monitor	

Health and Social Care Bill

A

B I L L

To establish and make provision about a National Health Service Commissioning Board and commissioning consortia and to make other provision about the National Health Service in England; to make provision about public health in the United Kingdom; to make provision about regulating health and adult social care services; to make provision about public involvement in health and social care matters, scrutiny of health matters by local authorities and co-operation between local authorities and commissioners of health care services; to make provision about regulating health and social care workers; to establish and make provision about a National Institute for Health and Care Excellence; to establish and make provision about a Health and Social Care Information Centre and to make other provision about information relating to health or social care matters; to abolish certain public bodies involved in health or social care; to make other provision about health care; and for connected purposes.

*Presented by Mr Secretary Lansley
supported by The Prime Minister, The Deputy Prime Minister,
Mr Chancellor of the Exchequer, Secretary Vince Cable,
Secretary Michael Gove, Secretary Eric Pickles, Danny Alexander,
Mr Simon Burns and Paul Burstow.*

*Ordered, by The House of Commons,
to be Printed, 19 January 2011.*

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PUBLISHED BY AUTHORITY OF THE HOUSE OF COMMONS
LONDON – THE STATIONERY OFFICE LIMITED
Printed in the United Kingdom by
The Stationery Office Limited
£x.xx