



# Health and Care Act 2022

## 2022 CHAPTER 31

### PART 1

#### HEALTH SERVICE IN ENGLAND: INTEGRATION, COLLABORATION AND OTHER CHANGES

##### *NHS England*

#### **1 NHS Commissioning Board renamed NHS England**

- (1) The National Health Service Commissioning Board is renamed NHS England.
- (2) Schedule 1 contains consequential amendments.

#### **2 Power to require commissioning of specialised services**

- (1) Section 3B of the National Health Service Act 2006 (Secretary of State's power to require commissioning of services) is amended as follows.
- (2) For subsection (2) substitute—
  - “(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 NHS England to arrange for the provision of that service or facility (whether by NHS England making arrangements itself or by giving directions under section 13YB or making arrangements under section 65Z5).”
- (3) In subsection (3), omit paragraph (d).
- (4) After subsection (4) insert—
  - “(4A) If the Secretary of State refuses a request by NHS England to revoke provision made by regulations under subsection (1)(d) prescribing a service or facility, the Secretary of State must explain why to NHS England.”

### 3 Spending on mental health

- (1) The National Health Service Act 2006 is amended as follows.
- (2) After section 12E insert—

#### **“12F Expected mental health spending**

- (1) The Secretary of State must, in respect of each financial year, publish and lay before Parliament a document—
- (a) stating, by comparison with the previous financial year—
    - (i) whether the Secretary of State expects there to be an increase in the amount of expenditure incurred by NHS England and integrated care boards (taken together) in relation to mental health, and
    - (ii) whether the Secretary of State expects there to be an increase in the proportion of the expenditure incurred by NHS England and integrated care boards (taken together) that relates to mental health, and
  - (b) explaining why.
- (2) The Secretary of State must publish and lay the document before the financial year to which it relates.”
- (3) In section 13U (annual report), after subsection (2A) (inserted by section 34 of this Act) insert—
- “(2B) The annual report must include—
- (a) a statement of the amount of expenditure incurred by NHS England and integrated care boards during the year (taken together) in relation to mental health,
  - (b) a calculation of the proportion of the expenditure incurred by NHS England and integrated care boards during the year (taken together) that relates to mental health, and
  - (c) an explanation of the statement and calculation.”

### 4 NHS England mandate: general

- (1) The National Health Service Act 2006 is amended as follows.
- (2) In section 13A (mandate)—
- (a) in subsection (1), omit “Before the start of each financial year.”;
  - (b) in subsection (2), in paragraph (a), omit from “during that financial year” to the end of that paragraph (but not the final “and”);
  - (c) omit subsections (3) and (4);
  - (d) in subsection (5), omit “in relation to the first financial year to which the mandate relates”;
  - (e) after subsection (6) insert—
- “(6A) The Secretary of State may revise the mandate.
- (6B) If the Secretary of State revises the mandate, the Secretary of State must publish and lay before Parliament the mandate as revised.”

- (3) In section 13B (the mandate: supplementary provision)—
- (a) for the heading substitute “Review of NHS England’s performance in implementing the mandate”;
  - (b) omit subsections (2) to (5).
- (4) In section 13T (business plan)—
- (a) in subsection (3), omit “for the first financial year to which the plan relates”;
  - (b) after subsection (3) insert—
 

“(3A) The fact that the mandate is revised during the period to which a business plan relates does not require NHS England to revise the plan.”
- (5) In section 13U (annual report), in subsection (2), for paragraph (a) substitute—
- (a) the extent to which, in that year, it met any objectives or requirements specified in the mandate.”.

## **5 NHS England mandate: cancer outcome targets**

- (1) Section 13A of the National Health Service Act 2006 (mandate) is amended in accordance with subsection (2).
- (2) After subsection (2), insert the following new subsection—
- (2A) The objectives specified by the Secretary of State under subsection (2)(a) for NHS England must include objectives relating to outcomes for cancer patients, and those objectives are to be treated by NHS England as having priority over any other objectives relating specifically to cancer.”

## **6 Duties as to reducing inequalities**

- In section 13G of the National Health Service Act 2006 (NHS England’s duties in relation to the reduction of inequalities)—
- (a) in paragraph (a), for “patients” substitute “persons”;
  - (b) in paragraph (b), after “services” insert “(including the outcomes described in section 13E(3))”.

## **7 Duties in respect of research: business plan and annual report etc**

- (1) The National Health Service Act 2006 is amended as follows.
- (2) In section 13L (duty in respect of research), after “functions,” insert “facilitate or otherwise”.
- (3) In section 13T (business plan), in subsection (2)(a), after “13G” insert “, 13L”.
- (4) In section 13U (annual report), in subsection (2)(c) (as amended by section 78(4) of this Act), at the appropriate place insert—
- “section 13L;”.

## **8 NHS England: wider effect of decisions**

- After section 13N of the National Health Service Act 2006 insert—

### **“13NA Duty to have regard to wider effect of decisions**

- (1) In making a decision about the exercise of its functions, NHS England must have regard to all likely effects of the decision in relation to—
  - (a) the health and well-being of the people of England;
  - (b) the quality of services provided to individuals—
    - (i) by relevant bodies, or
    - (ii) in pursuance of arrangements made by relevant bodies,
 for or in connection with the prevention, diagnosis or treatment of illness, as part of the health service in England;
  - (c) efficiency and sustainability in relation to the use of resources by relevant bodies for the purposes of the health service in England.
- (2) In subsection (1)—
  - (a) the reference to a decision does not include a reference to a decision about the services to be provided to a particular individual for or in connection with the prevention, diagnosis or treatment of illness;
  - (b) the reference to effects of a decision in relation to the health and well-being of the people of England includes a reference to its effects in relation to inequalities between the people of England with respect to their health and well-being;
  - (c) the reference to effects of a decision in relation to the quality of services provided to individuals includes a reference to its effects in relation to inequalities between individuals with respect to the benefits that they can obtain from those services.
- (3) In discharging the duty under this section, NHS England must have regard to guidance published by it under section 13NB.
- (4) In this section “relevant bodies” means—
  - (a) NHS England,
  - (b) integrated care boards,
  - (c) NHS trusts established under section 25, and
  - (d) NHS foundation trusts.

### **13NB Guidance about discharge of duty**

- (1) NHS England may publish guidance about the discharge of—
  - (a) the duty imposed on it by section 13NA;
  - (b) the duty imposed on integrated care boards by section 14Z43;
  - (c) the duty imposed on NHS trusts by section 26A;
  - (d) the duty imposed on NHS foundation trusts by section 63A.
- (2) NHS England must consult any persons NHS England considers it appropriate to consult—
  - (a) before first publishing guidance under this section, and
  - (b) before publishing any revised guidance containing changes that are, in the opinion of NHS England, significant.”

## 9 NHS England: duties in relation to climate change etc

After section 13NB of the National Health Service Act 2006 (inserted by section 8 of this Act) insert—

### “13NC Duties as to climate change etc

- (1) NHS England must, in the exercise of its functions, have regard to the need to—
  - (a) contribute towards compliance with—
    - (i) section 1 of the Climate Change Act 2008 (UK net zero emissions target), and
    - (ii) section 5 of the Environment Act 2021 (environmental targets), and
  - (b) adapt to any current or predicted impacts of climate change identified in the most recent report under section 56 of the Climate Change Act 2008.
- (2) In discharging the duty under this section, NHS England must have regard to guidance published by it under section 13ND.

### 13ND Guidance about discharge of duty under section 13NC etc

NHS England may publish guidance about the discharge of—

- (a) the duty imposed on it by section 13NC;
- (b) the duty imposed on integrated care boards by section 14Z44;
- (c) the duty imposed on NHS trusts by section 26B;
- (d) the duty imposed on NHS foundation trusts by section 63B.”

## 10 Public involvement: carers and representatives

In section 13Q of the National Health Service Act 2006 (public involvement and consultation), in subsection (2), after “individuals to whom the services are being or may be provided” insert “, and their carers and representatives (if any)”.

## 11 Information about inequalities

- (1) The National Health Service Act 2006 is amended as follows.
- (2) After section 13S insert—

### “13SA Information about inequalities

- (1) NHS England must publish a statement setting out—
  - (a) a description of the powers available to relevant NHS bodies to collect, analyse and publish information relating to—
    - (i) inequalities between persons with respect to their ability to access health services;
    - (ii) inequalities between persons with respect to the outcomes achieved for them by the provision of health services (including the outcomes described in section 13E(3)); and

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- (b) the views of NHS England about how those powers should be exercised in connection with such information.
- (2) NHS England may from time to time publish a revised statement under subsection (1).
- (3) In this section “relevant NHS bodies” means—
  - (a) integrated care boards,
  - (b) NHS trusts established under section 25, and
  - (c) NHS foundation trusts.”
- (3) In Schedule 4 (NHS trusts: constitution etc), in paragraph 12, after sub-paragraph (1A) (inserted by Schedule 4 to this Act) insert—
  - “(1B) The annual report must, in particular, review the extent to which the NHS trust has exercised its functions consistently with NHS England’s views set out in the latest statement published under section 13SA(1) (views about how functions relating to inequalities information should be exercised).”
- (4) In Schedule 7 (constitution of public benefit corporations), in paragraph 26, after sub-paragraph (1A) (inserted by Schedule 4 to this Act) insert—
  - “(1B) The reports must, in particular, review the extent to which the public benefit corporation has exercised its functions consistently with NHS England’s views set out in the latest statement published under section 13SA(1) (views about how functions relating to inequalities information should be exercised).”

## 12 Support and assistance by NHS England

After section 13Y of the National Health Service Act 2006 insert—

### *“Assistance and support*

#### **13YA Power of NHS England to provide assistance and support**

- (1) NHS England may provide assistance or support to—
  - (a) any person providing or proposing to provide services as part of the health service;
  - (b) any person, not within paragraph (a), exercising functions in relation to the health service.
- (2) The assistance that may be provided under subsection (1)(a) or (b) includes making available the services of NHS England’s employees or any other resources of NHS England.
- (3) The assistance that may be provided under subsection (1)(a), or that may be provided under subsection (1)(b) to integrated care boards, also includes financial assistance.
- (4) Assistance or support provided under this section may be provided on such terms, including terms as to payment, as NHS England considers appropriate.”

### **13 Exercise of functions relating to provision of services**

- (1) The National Health Service Act 2006 is amended as follows.
- (2) After section 13YA (inserted by section 12 of this Act) insert—

#### *“Discharge of functions*

#### **13YB Directions in respect of functions relating to provision of services**

- (1) NHS England may by direction provide for any of its relevant functions to be exercised by one or more integrated care boards.
- (2) In this section “relevant function” means—
  - (a) any function of NHS England under section 3B(1) (commissioning functions);
  - (b) any function of NHS England, not within paragraph (a), that relates to the provision of—
    - (i) primary medical services,
    - (ii) primary dental services,
    - (iii) primary ophthalmic services, or
    - (iv) services that may be provided as pharmaceutical services, or as local pharmaceutical services, under Part 7;
  - (c) any function of NHS England by virtue of section 7A or 7B (exercise of Secretary of State’s public health functions);
  - (d) any other functions of NHS England so far as exercisable in connection with any functions within paragraphs (a) to (c).
- (3) Regulations may—
  - (a) provide that the power in subsection (1) does not apply, or applies only to a prescribed extent, in relation to a prescribed function;
  - (b) impose conditions on the exercise of the power.
- (4) A direction under subsection (1) may include provision prohibiting or restricting the integrated care board from making delegation arrangements in relation to a function that is exercisable by it by virtue of the direction.
- (5) In subsection (4) “delegation arrangements” means arrangements made by a person for the exercise of a function by someone else.
- (6) NHS England may make payments to an integrated care board in respect of the exercise by it of a function by virtue of a direction under subsection (1).
- (7) NHS England may give directions to an integrated care board as to the exercise by it of any functions in pursuance of a direction under subsection (1).
- (8) As soon as reasonably practicable after giving a direction under subsection (1), NHS England must publish it.
- (9) Any rights acquired, or liabilities (including liabilities in tort) incurred, in respect of the exercise by an integrated care board of any function by virtue of this section are enforceable by or against it (and no other person).”

- (3) In section 73 (directions and regulations under Part 2), in subsection (1), after paragraph (b) insert—

“(ba) section 13YB.”.

## 14 Preparation of consolidated accounts for providers

Before section 66 of the National Health Service Act 2006 (and the italic heading before it) insert—

### *“Consolidated accounts*

#### **65Z4 Consolidated accounts for NHS trusts and NHS foundation trusts**

- (1) NHS England must, in respect of each financial year, prepare a set of accounts that consolidates the annual accounts of—
  - (a) all NHS trusts established under section 25, and
  - (b) all NHS foundation trusts.
- (2) The Secretary of State may give NHS England directions as to—
  - (a) the content and form of the consolidated accounts, and
  - (b) the methods and principles to be applied in preparing them.
- (3) NHS England must, within such period as the Secretary of State may direct, send a copy of the consolidated accounts to—
  - (a) the Secretary of State, and
  - (b) the Comptroller and Auditor General.
- (4) The accounts must be accompanied by such reports or other information as the Secretary of State may direct.
- (5) The Comptroller and Auditor General must—
  - (a) examine, certify and report on the consolidated accounts, and
  - (b) send a copy of the report to the Secretary of State and NHS England.
- (6) NHS England must lay before Parliament a copy of—
  - (a) the consolidated accounts, and
  - (b) the Comptroller and Auditor General’s report on them.”

## 15 Funding for service integration

- (1) The National Health Service Act 2006 is amended as follows.
- (2) In section 223B (funding of NHS England)—
  - (a) for subsection (6) substitute—
    - “(6) The Secretary of State may direct NHS England—
      - (a) that an amount of the sums paid to it under this section in respect of a financial year is to be used for purposes relating to service integration;
      - (b) about the use by NHS England of that amount for those purposes.”;



- (b) in subsection (7)—
    - (i) for “subsection (6)” substitute “subsection (6)(a)”;
    - (ii) in paragraph (b), for “mandate” substitute “direction”;
  - (c) after subsection (7) insert—
    - “(7A) The power under subsection (6)(b) includes power to give NHS England directions about the exercise of any of its functions under or by virtue of section 223GA (including directions requiring consultation with the Secretary of State or other specified persons).
    - (7B) The Secretary of State must publish any direction under subsection (6).”
- (3) In section 223GA (expenditure on integration)—
- (a) for subsections (1) and (2) substitute—
    - “(1) Where the Secretary of State has given NHS England a direction under section 223B(6)(a) about sums paid to it in respect of a financial year, NHS England may direct an integrated care board that an amount (a “designated amount”) of the sums paid to the board under section 223G in respect of that year is to be used for purposes relating to service integration.
    - (2) The designated amount—
      - (a) is to be determined in such manner as NHS England considers appropriate, and
      - (b) must be specified in the direction under subsection (1).”;
  - (b) in subsection (6), for paragraph (a) (but not the “and” at the end) substitute—
    - “(a) it may use the amount for any purposes relating to service integration.”;
  - (c) omit subsection (7).

## 16 Payments in respect of quality

In section 223K of the National Health Service Act 2006, omit subsections (4) and (5) (power of Secretary of State to make regulations about payments by NHS England in respect of quality).

## 17 Secondments to NHS England

- (1) The National Health Service Act 2006 is amended as follows.
- (2) In section 272 (orders, regulations, rules and directions), in subsection (6)—
  - (a) omit the “or” at the end of paragraph (b);
  - (b) after paragraph (c) insert—
    - “(d) regulations under paragraph 9A(5) of Schedule A1, or”.
- (3) In Schedule A1 (constitution of NHS England), after paragraph 9 insert—
  - “9A (1) NHS England may make arrangements for a person to be seconded to NHS England to serve as a member of NHS England’s staff.

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- (2) A period of secondment to NHS England does not affect the continuity of a person’s employment with the employer from whose service the person is seconded.
- (3) In paragraphs 9, 10, and 13 a reference to an employee of NHS England includes a person seconded to NHS England.
- (4) In paragraph 3(3) the reference to an employee of NHS England includes any of the following seconded to NHS England—
- (a) a person employed in the civil service of the State, or
  - (b) a person employed by—
    - (i) an integrated care board,
    - (ii) an NHS trust established under section 25,
    - (iii) an NHS foundation trust,
    - (iv) a Special Health Authority performing functions only or mainly in respect of England,
    - (v) the Care Quality Commission,
    - (vi) the Health and Social Care Information Centre,
    - (vii) the Health Services Safety Investigations Body,
    - (viii) the Human Tissue Authority,
    - (ix) the Human Fertilisation and Embryology Authority, or
    - (x) NICE.
- (5) The Secretary of State may by regulations amend this paragraph so as to provide that other references in this Act to an employee of NHS England include persons, or persons of a prescribed description, seconded to NHS England.”

*Integrated care boards*

**18 Role of integrated care boards**

For section 11 of the National Health Service Act 2006 and the italic heading before it substitute—

*“Role of integrated care boards in the health service in England*

**11 General functions of integrated care boards**

An integrated care board established under Chapter A3 of Part 2 has the function of arranging for the provision of services for the purposes of the health service in England in accordance with this Act.”

**19 Establishment of integrated care boards**

- (1) The National Health Service Act 2006 is amended as follows.
- (2) In Part 2, after Chapter A2 insert—

## “CHAPTER A3

### INTEGRATED CARE BOARDS

#### *“Establishment of integrated care boards (including by re-purposing clinical commissioning groups)”*

#### **14Z25 Duty to establish integrated care boards**

- (1) NHS England must establish bodies called integrated care boards in accordance with this Chapter.
- (2) Each integrated care board is to be established by order made by NHS England for an area within England.
- (3) The area for which an integrated care board is established must not coincide or overlap with the area of any other integrated care board.
- (4) NHS England must ensure that, at all times on and after the appointed day, the areas of integrated care boards together cover the whole of England.
- (5) An order establishing an integrated care board must provide for the constitution of the board, either by setting out the constitution or by making provision by reference to a published document where it is set out.
- (6) In Schedule 1B—
  - (a) Part 1 is about the constitution of an integrated care board (including its area);
  - (b) Part 2 is about the status and powers of an integrated care board and its accounts.
- (7) Before varying or revoking an order under this section NHS England must consult any integrated care board that it considers likely to be affected.
- (8) NHS England must publish orders under this section.
- (9) In this section “the appointed day” means a day appointed under this subsection by regulations made by the Secretary of State.

#### **14Z26 Process for establishing initial integrated care boards**

- (1) NHS England must publish a list of the initial areas for which integrated care boards are to be established (each of which is referred to in this section as an “initial area”).
- (2) The relevant clinical commissioning group or groups for an initial area must propose the constitution of the first integrated care board to be established for that area.
- (3) Before making a proposal under subsection (2), the relevant clinical commissioning group or groups must consult any persons they consider it appropriate to consult (and it is immaterial for this purpose whether the consultation is carried out before or after this section comes into force).

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- (4) When establishing the first integrated care board under section 14Z25 for an initial area, NHS England must give effect to any proposal under subsection (2) unless it considers that—
- (a) the proposal is inappropriate, or
  - (b) the relevant clinical commissioning group or groups have not carried out an appropriate consultation under subsection (3),
- and in that case NHS England must determine the terms of the constitution itself.
- (5) Nothing in this section—
- (a) prevents NHS England from establishing the first integrated care board for an initial area in a case where the relevant clinical commissioning group or groups have failed within a reasonable period to make a proposal under subsection (2), or
  - (b) limits the re-exercise of the power in section 14Z25.
- (6) NHS England may publish guidance for clinical commissioning groups about the exercise of their functions under this section.
- (7) A clinical commissioning group must have regard to guidance published under this section.
- (8) In this section “the relevant clinical commissioning group or groups” means—
- (a) in relation to an area that coincides with the area of a clinical commissioning group, that group;
  - (b) in relation to an area that includes the whole or part of the area of more than one clinical commissioning group, those groups acting jointly.

#### **14Z27 Abolition of clinical commissioning groups**

- (1) Any clinical commissioning group in existence immediately before the appointed day is abolished at the beginning of that day.
- (2) In this section “the appointed day” has the same meaning as in section 14Z25.

#### **14Z28 Transfer schemes in connection with integrated care boards**

- (1) NHS England may, in connection with the abolition of a clinical commissioning group under section 14Z27, make a scheme for the transfer of the group’s property, rights or liabilities to NHS England or an integrated care board.
- (2) NHS England may, in connection with the establishment of an integrated care board, make a scheme for the transfer of property, rights or liabilities to the board from—
  - (a) NHS England,
  - (b) an NHS trust established under section 25,
  - (c) an NHS foundation trust, or
  - (d) a Special Health Authority established under section 28.
- (3) NHS England may, in connection with the variation of the constitution of an integrated care board or the abolition of an integrated care board, make a

scheme for the transfer of the board's property, rights or liabilities to NHS England or an integrated care board.

- (4) The reference in subsection (3) to the variation of the constitution of an integrated care board is to its variation by order under section 14Z25 or under provision included in its constitution by virtue of paragraph 14 of Schedule 1B.
- (5) NHS England must exercise its powers under subsection (1) or (3) so as to ensure that—
  - (a) on the abolition of a clinical commissioning group whose area coincides with that of an integrated care board, all of the group's property, rights and liabilities (other than criminal liabilities) are transferred to that board;
  - (b) on the abolition of a clinical commissioning group whose area does not coincide with that of an integrated care board, all of the group's property, rights and liabilities (other than criminal liabilities) are transferred to one or more integrated care boards;
  - (c) on the abolition of an integrated care board, all of the board's liabilities (other than criminal liabilities) are transferred.
- (6) The things that may be transferred under a transfer scheme include—
  - (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.
- (7) A transfer scheme may—
  - (a) create rights, or impose liabilities, in relation to property or rights transferred;
  - (b) make provision about the continuing effect of things done by, on behalf of or in relation to 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;
  - (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;
  - (e) make provision for the shared ownership or use of property;
  - (f) make provision which is the same as or similar to the TUPE regulations;
  - (g) make other consequential, supplementary, incidental or transitional provision.
- (8) A transfer scheme may provide—
  - (a) for modifications by agreement;
  - (b) for modifications to have effect from the date when the original scheme came into effect.
- (9) In subsection (7)(f), “the TUPE regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246).

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- (10) In this section—
- (a) references to rights and liabilities include rights and liabilities relating to a contract of employment;
  - (b) references to the transfer of property include the grant of a lease.

*Constitution: publication*

**14Z29 Duty for integrated care board to publish constitution**

Each integrated care board must publish its constitution (as varied from time to time by order under section 14Z25 or under provision included in its constitution by virtue of paragraph 15 of Schedule 1B).

*Conflicts of interest*

**14Z30 Register of interests and management of conflicts of interests**

- (1) Each integrated care board must maintain one or more registers of the interests of—
    - (a) members of the board,
    - (b) members of its committees or sub-committees, and
    - (c) its employees.
  - (2) Each integrated care board must publish the registers maintained under subsection (1) or make arrangements to ensure that members of the public have access to the registers on request.
  - (3) Each integrated care board must make arrangements to ensure—
    - (a) that a person mentioned in subsection (1) declares any conflict or potential conflict of interest that the person has in relation to a decision to be made in the exercise of the commissioning functions of the integrated care board,
    - (b) that any such declaration is made as soon as practicable after the person becomes aware of the conflict or potential conflict and, in any event, within 28 days of the person becoming aware, and
    - (c) that any such declaration is included in the registers maintained under subsection (1).
  - (4) Each integrated care board must make arrangements for managing conflicts and potential conflicts of interest in such a way as to ensure that they do not, and do not appear to, affect the integrity of the board’s decision-making processes.
  - (5) For the purposes of this section, the commissioning functions of an integrated care board are the functions of the board in arranging for the provision of services as part of the health service.”
- (3) In section 272 (orders, regulations, rules and directions), in subsection (1), before paragraph (a) insert—
- “(za) section 14Z25(2),”.

- (4) Schedule 2 inserts into the National Health Service Act 2006 a new Schedule 1B (integrated care boards: constitution etc) and contains a consequential amendment.

## **20 People for whom integrated care boards have responsibility**

- (1) The National Health Service Act 2006 is amended as follows.
- (2) After section 14Z30 (inserted by section 19 of this Act) insert—

*“People for whom integrated care board has responsibility*

### **14Z31 People for whom integrated care board has responsibility**

- (1) NHS England must from time to time publish rules for determining the group of people for whom each integrated care board has core responsibility.
- (2) The rules must ensure that the following are allocated to at least one group—
- everyone who is provided with NHS primary medical services, and
  - everyone who is usually resident in England and is not provided with NHS primary medical services.
- (3) Regulations may create exceptions to subsection (2) in relation to people of a prescribed description (which may include a description framed by reference to the primary medical services with which the people are provided).
- (4) References in this Act to the group of people for whom an integrated care board has core responsibility are to be read in accordance with this section.
- (5) In this section, “NHS primary medical services” means services provided by a person, other than NHS England or an integrated care board, in pursuance of—
- a general medical services contract to provide primary medical services of a prescribed description,
  - arrangements under section 83(2) for the provision of primary medical services of a prescribed description, or
  - section 92 arrangements for the provision of primary medical services of a prescribed description.”
- (3) In section 272 (orders, regulations, rules and directions)—
- in subsection (1), after paragraph (za) (inserted by section 19 of this Act) insert—
 

“(zb) section 14Z31(1),”;
  - in subsection (6), after paragraph (zb) insert—
 

“(zba) regulations under section 14Z31(3),”.
- (4) The Secretary of State may by regulations—
- substitute the following section for section 14Z31 of the National Health Service Act 2006 (as inserted by subsection (2) of this section)—

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**“14Z31 People for whom integrated care board has responsibility**

- (1) References in this Act to the group of people for whom an integrated care board has core responsibility are to the people who usually reside in its area.
- (2) Regulations may create exceptions to subsection (1) in relation to people of a prescribed description.”
- (b) repeal section 272(1)(zb) of that Act (as inserted by subsection (3) of this section), and
- (c) amend section 272(6)(zba) of that Act (as inserted by subsection (3) of this section), so as to substitute “14Z31(2)” for “14Z31(3)”.

*Integrated care boards: functions*

**21 Commissioning hospital and other health services**

For sections 3 and 3A of the National Health Service Act 2006 substitute—

**“3 Duties of integrated care boards as to commissioning certain health services**

- (1) An integrated care board must arrange for the provision of the following to such extent as it considers necessary to meet the reasonable requirements of the people for whom it has responsibility—
  - (a) hospital accommodation,
  - (b) other accommodation for the purpose of any service provided under this Act,
  - (c) medical services other than primary medical services (for primary medical services, see Part 4),
  - (d) dental services other than primary dental services (for primary dental services, see Part 5),
  - (e) ophthalmic services other than primary ophthalmic services (for primary ophthalmic services, see Part 6),
  - (f) nursing and ambulance services,
  - (g) such other services or facilities for the care of pregnant women, women who are breastfeeding and young children as the board considers are appropriate as part of the health service,
  - (h) such other services or facilities for palliative care as the board considers are appropriate as part of the health service,
  - (i) such other services or facilities for the prevention of illness, the care of persons suffering from illness and the after-care of persons who have suffered from illness as the board considers are appropriate as part of the health service, and
  - (j) such other services or facilities as are required for the diagnosis and treatment of illness.
- (2) For the purposes of this section an integrated care board has responsibility for—



- (a) the group of people for whom it has core responsibility (see section 14Z31), and
  - (b) such other people as may be prescribed (whether generally or in relation to a prescribed service or facility).
- (3) The duty imposed on an integrated care board by subsection (1) to arrange for the provision of services or facilities does not apply to the extent that—
- (a) NHS England has a duty to arrange for their provision;
  - (b) another integrated care board has a duty to arrange for their provision by virtue of subsection (2)(b).
- (4) In exercising its functions under this section, an integrated care board must act consistently with—
- (a) the discharge by the Secretary of State and NHS England of their duty under section 1(1) (duty to promote a comprehensive health service), and
  - (b) the objectives and requirements for the time being specified in the mandate published under section 13A.

### **3A Power of integrated care boards to commission certain health services**

- (1) Each integrated care board 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—
- (a) in the physical and mental health of the people for whom it has responsibility, or
  - (b) in the prevention, diagnosis and treatment of illness in those people.
- (2) For the purposes of this section an integrated care board has responsibility for—
- (a) the group of people for whom it has core responsibility (see section 14Z31), and
  - (b) such other people as may be prescribed (whether generally or in relation to a prescribed service or facility).
- (3) An integrated care board may not arrange for the provision of a service or facility under subsection (1) if NHS England has a duty to arrange for its provision by virtue of section 3B or 4.
- (4) In exercising its functions under this section, an integrated care board must act consistently with—
- (a) the discharge by the Secretary of State and NHS England of their duty under section 1(1) (duty to promote a comprehensive health service), and
  - (b) the objectives and requirements for the time being specified in the mandate published under section 13A.”

## **22 Commissioning primary care services etc**

Schedule 3 confers functions on integrated care boards in relation to primary care services and contains other amendments relating to primary care services.

### **23 Transfer schemes in connection with transfer of primary care functions**

- (1) NHS England may, in connection with the amendments made by Schedule 3, make one or more schemes for the transfer of its property, rights and liabilities to an integrated care board.
- (2) The things that may be transferred under a transfer scheme include—
  - (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.
- (3) A transfer scheme may—
  - (a) create rights, or impose liabilities, in relation to property or rights transferred;
  - (b) make provision about the continuing effect of things done by, on behalf of or in relation to 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;
  - (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;
  - (e) make provision for the shared ownership or use of property;
  - (f) make provision which is the same as or similar to the TUPE regulations;
  - (g) make other consequential, supplementary, incidental or transitional provision.
- (4) A transfer scheme may provide—
  - (a) for modifications by agreement;
  - (b) for modifications to have effect from the date when the original scheme came into effect.
- (5) In subsection (3)(f), “the TUPE regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 ([S.I. 2006/246](#)).
- (6) For the purposes of this section—
  - (a) references to rights and liabilities include rights and liabilities relating to a contract of employment;
  - (b) references to the transfer of property include the grant of a lease.

### **24 Commissioning arrangements: conferral of discretions**

In section 12ZA of the National Health Service Act 2006 (commissioning arrangements by NHS England and integrated care boards), after subsection (2) insert—

“(2A) The arrangements may confer discretions on a person with whom they are made in relation to anything to be provided under the arrangements.”

### **25 General functions**

- (1) The National Health Service Act 2006 is amended as follows.
- (2) After section [14Z31](#) (inserted by section 20 of this Act) insert—

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### *“General duties of integrated care boards*

#### **14Z32 Duty to promote NHS Constitution**

- (1) Each integrated care board must, in the exercise of its functions—
  - (a) act with a view to securing that health services are provided in a way which promotes the NHS Constitution, and
  - (b) promote awareness of the NHS Constitution among patients, staff and members of the public.
- (2) In this section, “patients” and “staff” have the same meaning as in Chapter 1 of Part 1 of the Health Act 2009 (see section 3(7) of that Act).

#### **14Z33 Duty as to effectiveness, efficiency etc**

Each integrated care board must exercise its functions effectively, efficiently and economically.

#### **14Z34 Duty as to improvement in quality of services**

- (1) Each integrated care 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 the prevention, diagnosis or treatment of illness.
- (2) In discharging its duty under subsection (1), an integrated care board must, in particular, act with a view to securing continuous improvement in the outcomes that are achieved from the provision of the services.
- (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
  - (c) the quality of the experience undergone by patients.

#### **14Z35 Duties as to reducing inequalities**

Each integrated care board must, in the exercise of its functions, have regard to the need to—

- (a) reduce inequalities between persons with respect to their ability to access health services, and
- (b) reduce inequalities between patients with respect to the outcomes achieved for them by the provision of health services (including the outcomes described in section 14Z34(3)).

#### **14Z36 Duty to promote involvement of each patient**

Each integrated care board must, in the exercise of its functions, promote the involvement of patients, and their carers and representatives (if any), in decisions which relate to—

- (a) the prevention or diagnosis of illness in the patients, or

- (b) their care or treatment.

#### **14Z37 Duty as to patient choice**

Each integrated care board must, in the exercise of its functions, act with a view to enabling patients to make choices with respect to aspects of health services provided to them.

#### **14Z38 Duty to obtain appropriate advice**

Each integrated care board must obtain advice appropriate for enabling it effectively to discharge its functions from persons who (taken together) have a broad range of professional expertise in—

- (a) the prevention, diagnosis or treatment of illness, and
- (b) the protection or improvement of public health.

#### **14Z39 Duty to promote innovation**

Each integrated care 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).

#### **14Z40 Duty in respect of research**

Each integrated care board must, in the exercise of its functions, facilitate or otherwise promote—

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

#### **14Z41 Duty to promote education and training**

Each integrated care board must, in exercising its functions, have regard to the need to promote education and training for the persons mentioned in section 1F(1) so as to assist the Secretary of State and Health Education England in the discharge of the duty under that section.

#### **14Z42 Duty to promote integration**

- (1) Each integrated care board must exercise its functions with a view to securing that health services are provided in an integrated way where it considers that this would—
  - (a) improve the quality of those services (including the outcomes that are achieved from their provision),
  - (b) reduce inequalities between persons with respect to their ability to access those services, or
  - (c) reduce inequalities between persons with respect to the outcomes achieved for them by the provision of those services.
- (2) Each integrated care board must exercise its functions with a view to securing that the provision of health services is integrated with the provision of health-related services or social care services where it considers that this would—

- (a) improve the quality of the health services (including the outcomes that are achieved from the provision of those services),
- (b) reduce inequalities between persons with respect to their ability to access those services, or
- (c) reduce inequalities between persons with respect to the outcomes achieved for them by the provision of those services.

(3) In this section—

“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 or for the purposes of the Social Services and Well-being (Wales) Act 2014).

(4) For the purposes of this section, the provision of housing accommodation is a health-related service.

#### **14Z43 Duty to have regard to wider effect of decisions**

(1) In making a decision about the exercise of its functions, an integrated care board must have regard to all likely effects of the decision in relation to—

- (a) the health and well-being of the people of England;
- (b) the quality of services provided to individuals—
  - (i) by relevant bodies, or
  - (ii) in pursuance of arrangements made by relevant bodies, for or in connection with the prevention, diagnosis or treatment of illness, as part of the health service in England;
- (c) efficiency and sustainability in relation to the use of resources by relevant bodies for the purposes of the health service in England.

(2) In subsection (1)—

- (a) the reference to a decision does not include a reference to a decision about the services to be provided to a particular individual for or in connection with the prevention, diagnosis or treatment of illness;
- (b) the reference to effects of a decision in relation to the health and well-being of the people of England includes a reference to its effects in relation to inequalities between the people of England with respect to their health and well-being;
- (c) the reference to effects of a decision in relation to the quality of services provided to individuals includes a reference to its effects in relation to inequalities between individuals with respect to the benefits that they can obtain from those services.

(3) In discharging the duty under this section, integrated care boards must have regard to guidance published by NHS England under section 13NB.

(4) In this section “relevant bodies” means—

- (a) NHS England,
- (b) integrated care boards,

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- (c) NHS trusts established under section 25, and
- (d) NHS foundation trusts.

#### **14Z44 Duties as to climate change etc**

- (1) Each integrated care board must, in the exercise of its functions, have regard to the need to—
  - (a) contribute towards compliance with—
    - (i) section 1 of the Climate Change Act 2008 (UK net zero emissions target), and
    - (ii) section 5 of the Environment Act 2021 (environmental targets), and
  - (b) adapt to any current or predicted impacts of climate change identified in the most recent report under section 56 of the Climate Change Act 2008.
- (2) In discharging the duty under this section, integrated care boards must have regard to guidance published by NHS England under section 13ND.

#### *Involvement of the public*

#### **14Z45 Public involvement and consultation by integrated care boards**

- (1) This section applies in relation to any health services which are, or are to be, provided pursuant to arrangements made by an integrated care board in the exercise of its functions (“commissioning arrangements”).
- (2) The integrated care board must make arrangements to secure that individuals to whom the services are being or may be provided, and their carers and representatives (if any), are involved (whether by being consulted or provided with information or in other ways)—
  - (a) in the planning of the commissioning arrangements by the integrated care board,
  - (b) in the development and consideration of proposals by the integrated care board for changes in the commissioning arrangements where the implementation of the proposals would have an impact on—
    - (i) the manner in which the services are delivered to the individuals (at the point when the service is received by them), or
    - (ii) the range of health services available to them, and
  - (c) in decisions of the integrated care board affecting the operation of the commissioning arrangements where the implementation of the decisions would (if made) have such an impact.
- (3) This section does not require an integrated care board to make arrangements in relation to matters to which a trust special administrator’s draft or final report under section 65F or 65I relates before—
  - (a) in a case where the administrator’s report relates to an NHS trust, NHS England and the Secretary of State have made their decisions under section 65K(1) and (2), or

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- (b) in a case where the administrator’s report relates to an NHS foundation trust, the Secretary of State is satisfied as mentioned in section 65KB(1) or 65KD(1) or makes a decision under section 65KD(9).

*Joint exercise of functions with Local Health Boards*

**14Z46 Joint exercise of functions with Local Health Boards**

- (1) Regulations may provide for any prescribed functions of an integrated care board to be exercised jointly with a Local Health Board.
- (2) The regulations may permit or require any functions that are exercisable jointly by an integrated care board and a Local Health Board by virtue of the regulations to be exercised by a joint committee of those bodies.
- (3) Arrangements made by virtue of this section do not affect the liability of an integrated care board for the exercise of any of its functions.

*Additional powers of integrated care boards*

**14Z47 Raising additional income**

- (1) An integrated care board 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) An integrated care 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 exercise by the board of its other functions.

**14Z48 Power to make grants**

- (1) An integrated care board may make payments—
  - (a) by way of grant to any of its partner NHS trusts or NHS foundation trusts;
  - (b) by way of grant or loan to a voluntary organisation which provides or arranges for the provision of services which are similar to the services in respect of which the integrated care board has functions.
- (2) The payments may be made subject to such terms as the integrated care board considers appropriate.
- (3) For the purposes of this Act an NHS trust or NHS foundation trust is a “partner” of an integrated care board if the trust—
  - (a) provides services for the purposes of the health service within the integrated care board’s area, and
  - (b) has the function, under the integrated care board’s constitution, of participating in the nomination of members as a result of falling within a description prescribed for the purposes paragraph 8(2)(a) of Schedule 1B.

### *Experience of members*

#### **14Z49 Duty to keep experience of members under review etc**

An integrated care board must—

- (a) keep under review the skills, knowledge and experience that it considers necessary for members of the board to possess (when taken together) in order for the board effectively to carry out its functions, and
- (b) if it considers that the board as constituted lacks the necessary skills, knowledge and experience, take such steps as it considers necessary to address or mitigate that shortcoming.

### *NHS England's functions in relation to integrated care boards*

#### **14Z50 Responsibility for payments to providers**

- (1) NHS England may publish a document specifying—
  - (a) circumstances in which an integrated care board is liable to make a payment to a person in respect of services provided by that person in pursuance of arrangements made by another integrated care board in the discharge of commissioning functions, and
  - (b) how the amount of any such payment is to be determined.
- (2) An integrated care board is required to make payments in accordance with any document published under subsection (1).
- (3) Where an integrated care board is required to make a payment by virtue of subsection (2), no other integrated care board is liable to make it.
- (4) Accordingly, any obligation of another integrated care board 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).
- (6) NHS England may publish guidance for integrated care boards for the purpose of assisting them in understanding and applying any document published under subsection (1).
- (7) In this section “commissioning functions” means the functions of integrated care boards in arranging for the provision of services as part of the health service.

#### **14Z51 Guidance by NHS England**

- (1) NHS England must publish guidance for integrated care boards on the discharge of their functions.
- (2) Each integrated care board must have regard to guidance under this section.



### *Forward planning and reports*

#### **14Z52 Joint forward plans for integrated care board and its partners**

- (1) Before the start of each financial year, an integrated care board and its partner NHS trusts and NHS foundation trusts must prepare a plan setting out how they propose to exercise their functions in the next five years.
- (2) The plan must, in particular—
  - (a) describe the health services for which the integrated care board proposes to make arrangements in the exercise of its functions by virtue of this Act;
  - (b) explain how the integrated care board proposes to discharge its duties under—
    - (i) sections 14Z34 to 14Z45 (general duties of integrated care boards), and
    - (ii) sections 223GB to 223N (financial duties);
  - (c) set out any steps that the integrated care board proposes to take to implement any joint local health and wellbeing strategy to which it is required to have regard under section 116B(1) of the Local Government and Public Involvement in Health Act 2007;
  - (d) set out any steps that the integrated care board proposes to take to address the particular needs of children and young persons under the age of 25;
  - (e) set out any steps that the integrated care board proposes to take to address the particular needs of victims of abuse (including domestic abuse and sexual abuse, whether of children or adults).
- (3) The integrated care board and its partner NHS trusts and NHS foundation trusts must publish the plan.
- (4) The integrated care board and its partner NHS trusts and NHS foundation trusts must give a copy of the plan to—
  - (a) the integrated care partnership for the board’s area,
  - (b) each relevant Health and Wellbeing Board, and
  - (c) NHS England.
- (5) NHS England may give a direction as to the date by which subsection (4) must be complied with.
- (6) An integrated care board and its partner NHS trusts and NHS foundation trusts must have regard to the plan under subsection (1).
- (7) In this Chapter “relevant Health and Wellbeing Board”, in relation to an integrated care board (or an integrated care board and its partner NHS trusts and NHS foundation trusts), means a Health and Wellbeing Board established by a local authority whose area coincides with, or includes the whole or any part of, the area of the integrated care board.
- (8) In this Act “financial year”, in relation to an integrated care board, means—
  - (a) the period beginning with the date on which the integrated care board is established and ending with the 31 March following that date, and

- (b) each successive period of twelve months.

#### **14Z53 Revision of forward plans**

- (1) An integrated care board and its partner NHS trusts and NHS foundation trusts may revise a plan published under section 14Z52.
- (2) If the integrated care board and its partner NHS trusts and NHS foundation trusts revise the plan in a way that they consider to be significant, section 14Z52(3) and (4) apply in relation to the revised plan as they applied in relation to the original plan.
- (3) If the integrated care board and its partner NHS trusts and NHS foundation trusts revise the plan in any other way they must—
  - (a) publish a document setting out the changes, and
  - (b) give a copy of the document to—
    - (i) the integrated care partnership for the board’s area,
    - (ii) each relevant Health and Wellbeing Board, and
    - (iii) NHS England.

#### **14Z54 Consultation about forward plans**

- (1) This section applies where an integrated care board and its partner NHS trusts and NHS foundation trusts are—
  - (a) preparing a plan under section 14Z52, or
  - (b) revising a plan under section 14Z53 in a way that they consider to be significant.
- (2) The integrated care board and its partner NHS trusts and NHS foundation trusts must consult—
  - (a) the group of people for whom the integrated care board has core responsibility, and
  - (b) any other persons they consider it appropriate to consult.
- (3) The integrated care board and its partner NHS trusts and NHS foundation trusts must involve each relevant Health and Wellbeing Board in preparing or revising the plan.
- (4) The integrated care board and its partner NHS trusts and NHS foundation trusts must, in particular—
  - (a) give each relevant Health and Wellbeing Board a draft of the plan or (as the case may be) the plan as revised, and
  - (b) consult each relevant Health and Wellbeing Board on whether the draft takes proper account of each joint local health and wellbeing strategy published by it which relates to the period (or any part of the period) to which the plan relates.
- (5) Where a Health and Wellbeing Board is consulted under subsection (4)(b)—
  - (a) it must respond with its opinion on the matter mentioned there;
  - (b) it may also give that opinion to NHS England.

- (6) Where a Health and Wellbeing Board gives its opinion to NHS England under subsection (5)(b) it must inform the integrated care board and its partner NHS trusts and NHS foundation trusts that it has done so (unless it informed them, in advance, that it was planning to do so).
- (7) If an integrated care board and its partner NHS trusts and NHS foundation trusts revise or further revise a draft after it has been given to each relevant Health and Wellbeing Board under subsection (4), subsections (4) and (5) apply in relation to the revised draft as they applied in relation to the original draft.
- (8) An integrated care board and its partner NHS trusts and NHS foundation trusts must include in a plan published under section 14Z52(3)—
  - (a) a summary of the views expressed by anyone consulted under subsection (2),
  - (b) an explanation of how they took account of those views, and
  - (c) a statement of the final opinion of each relevant Health and Wellbeing Board consulted in relation to the plan under subsection (4).
- (9) In this section, “joint local health and wellbeing strategy” means a strategy under section 116A of the Local Government and Public Involvement in Health Act 2007.

#### **14Z55 Opinion of Health and Wellbeing Boards on forward plan**

- (1) A relevant Health and Wellbeing Board—
  - (a) may give NHS England its opinion on whether a plan published by an integrated care board and its partner NHS trusts and NHS foundation trusts under section 14Z52(3) takes proper account of each joint local health and wellbeing strategy published by the Health and Wellbeing Board which relates to the period (or any part of the period) to which the plan relates, and
  - (b) if it does so, must give the integrated care board and its partner NHS trusts and NHS foundation trusts a copy of its opinion.
- (2) In this section, “joint local health and wellbeing strategy” has the same meaning as in section 14Z54(9).

#### **14Z56 Joint capital resource use plan for integrated care board and its partners**

- (1) Before the start of each financial year, an integrated care board and its partner NHS trusts and NHS foundation trusts must prepare a plan setting out their planned capital resource use.
- (2) The plan must relate to such period as may be specified in a direction by the Secretary of State.
- (3) The Secretary of State must publish any direction under subsection (2).
- (4) The integrated care board and its partner NHS trusts and NHS foundation trusts must publish the plan.

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- (5) The integrated care board and its partner NHS trusts and NHS foundation trusts must give a copy of the plan to—
  - (a) the integrated care partnership for the board’s area,
  - (b) each relevant Health and Wellbeing Board, and
  - (c) NHS England.
- (6) NHS England may give a direction as to the date by which subsection (5) must be complied with.
- (7) NHS England may publish guidance about the discharge by an integrated care board and its partner NHS trusts and NHS foundation trusts of their functions under this section.
- (8) An integrated care board and its partner NHS trusts and NHS foundation trusts must have regard to any guidance published under subsection (7).
- (9) NHS England may give directions, in relation to a financial year—
  - (a) specifying descriptions of resources which must, or must not, be treated as capital resources for the purposes of this section;
  - (b) specifying uses of capital resources which must, or must not, be taken into account for the purposes of this section.
- (10) The reference in subsection (1) to the use of capital resources is a reference to its expenditure, consumption or reduction in value.

#### **14Z57 Revision of joint capital resource use plans**

- (1) An integrated care board and its partner NHS trusts and NHS foundation trusts may revise a plan published under section 14Z56.
- (2) If the integrated care board and its partner NHS trusts and NHS foundation trusts revise the plan in a way that they consider to be significant, section 14Z56(4) and (5) apply in relation to the revised plan as they applied in relation to the original plan.
- (3) If the integrated care board and its partner NHS trusts and NHS foundation trusts revise the plan in any other way, they must—
  - (a) publish a document setting out the changes, and
  - (b) give a copy of the document to—
    - (i) the integrated care partnership for the board’s area,
    - (ii) each relevant Health and Wellbeing Board, and
    - (iii) NHS England.

#### **14Z58 Annual report**

- (1) An integrated care board must, in each financial year, prepare a report (an “annual report”) on how it has discharged its functions in the previous financial year.
- (2) An annual report must, in particular—
  - (a) explain how the integrated care board has discharged its duties under sections 14Z34 to 14Z45 and 14Z49 (general duties of integrated care boards),

- (b) review the extent to which the board has exercised its functions in accordance with the plans published under—
    - section 14Z52 (forward plan), and
    - section 14Z56 (capital resource use plan),
  - (c) review the extent to which the board has exercised its functions consistently with NHS England’s views set out in the latest statement published under section 13SA(1) (views about how functions relating to inequalities information should be exercised), and
  - (d) review any steps that the board has taken to implement any joint local health and wellbeing strategy to which it was required to have regard under section 116B(1) of the Local Government and Public Involvement in Health Act 2007.
- (3) In undertaking the review required by subsection (2)(d), an integrated care board must consult each relevant Health and Wellbeing Board.
- (4) An annual report must include—
- (a) a statement of the amount of expenditure incurred by the integrated care board during the financial year in relation to mental health,
  - (b) a calculation of the proportion of the expenditure incurred by the integrated care board during the financial year that relates to mental health, and
  - (c) an explanation of the statement and calculation.
- (5) NHS England may give directions to integrated care boards as to the form and content of an annual report.
- (6) An integrated care board must—
- (a) give a copy of its annual report to NHS England before the date specified by NHS England in a direction, and
  - (b) publish a copy of the annual report.

*Performance assessment of integrated care boards*

**14Z59 Performance assessment of integrated care boards**

- (1) NHS England must conduct a performance assessment of each integrated care board in respect of each financial year.
- (2) A performance assessment is an assessment of how well the integrated care board has discharged its functions during that year.
- (3) The assessment must, in particular, include an assessment of how well the integrated care board has discharged its duties under—
  - (a) section 14Z34 (improvement in quality of services),
  - (b) section 14Z35 (reducing inequalities),
  - (c) section 14Z38 (obtaining appropriate advice),
  - (d) section 14Z40 (duty in respect of research),
  - (e) section 14Z43 (duty to have regard to effect of decisions),
  - (f) section 14Z45 (public involvement and consultation),
  - (g) sections 223GB to 223N (financial duties), and

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- (h) section 116B(1) of the Local Government and Public Involvement in Health Act 2007 (duty to have regard to assessments and strategies).
- (4) In conducting a performance assessment, NHS England must consult each relevant Health and Wellbeing Board as to its views on any steps that the board has taken to implement any joint local health and wellbeing strategy to which the board was required to have regard under section 116B(1) of that Act of 2007.
- (5) In conducting a performance assessment, NHS England must, in particular, have regard to—
  - (a) any guidance published by the Secretary of State for the purposes of this section, and
  - (b) any guidance published under section 14Z51.
- (6) NHS England must publish a report in respect of each financial year containing a summary of the results of each performance assessment conducted by NHS England in respect of that year.

*Power of NHS England to obtain information*

**14Z60 Power of NHS England to obtain information**

- (1) NHS England may require an integrated care board to provide NHS England with information.
- (2) The information must be provided in such form, and at such time or within such period, as NHS England may require.

*Intervention powers*

**14Z61 Power to give directions to integrated care boards**

- (1) This section applies if NHS England is satisfied that—
  - (a) an integrated care board is failing or has failed to discharge any of its functions, or
  - (b) there is a significant risk that an integrated care board will fail to do so.
- (2) NHS England may direct the integrated care board to discharge such of those functions in such manner and within such period or periods as may be specified in the direction.
- (3) NHS England may direct—
  - (a) the integrated care board, or
  - (b) the chief executive of the integrated care board,
 to cease to perform any functions for such period or periods as may be specified in the direction.
- (4) NHS England may—
  - (a) terminate the appointment of the integrated care board’s chief executive, and

- (b) direct the chair of the board as to which individual to appoint as a replacement and on what terms.
- (5) Where a direction is given under subsection (3)(a) NHS England may—
- (a) exercise, on behalf of the integrated care board, any of the functions that are the subject of the direction;
  - (b) direct another integrated care board to perform any of those functions on behalf of the integrated care board, in such manner and within such period or periods as may be specified in the direction.
- (6) A direction under subsection (5)(b) may include provision prohibiting or restricting the integrated care board from making delegation arrangements in relation to a function that is exercisable by it by virtue of the direction.
- (7) In subsection (6) “delegation arrangements” means arrangements made by a person for the exercise of a function by someone else.
- (8) Where a direction is given under subsection (3)(b) NHS England may—
- (a) exercise, on behalf of the chief executive, any of the functions that are the subject of the direction;
  - (b) direct the chief executive of another integrated care board to perform any of those functions on behalf of the chief executive, in such manner and within such period or periods as may be specified in the direction.
- (9) For the purposes of this section—
- (a) a failure to discharge a function includes a failure to discharge it properly, and
  - (b) a failure to discharge a function properly includes a failure to discharge it consistently with what NHS England considers to be the interests of the health service.

#### **14Z62 Section 14Z61 directions: consultation and cooperation**

- (1) Before exercising the power conferred by section 14Z61(5)(b) or (8)(b) NHS England must consult the integrated care board to which it is proposing to give the direction or to whose chief executive it is proposing to give the direction.
- (2) Where a direction is given under section 14Z61(3)(b) to the chief executive of an integrated care board, that board must co-operate with any chief executive to whom a direction is given under subsection (8)(b).

#### *Disclosure of information*

#### **14Z63 Permitted disclosures of information**

- (1) An integrated care 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,
  - (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),

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- (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,
  - (f) the disclosure is made for the purpose of facilitating the exercise of any of the integrated care board’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).
- (2) Subsection (1)(a) to (c) and (h) have effect notwithstanding any rule of common law which would otherwise prohibit or restrict the disclosure.

### *Interpretation*

#### **14Z64 Interpretation**

In this Chapter—

“the health service” means the health service in England;

“health services” means services provided as part of the health service;

“integrated care partnership” has the meaning given by section 116ZA(1) of the Local Government and Public Involvement in Health Act 2007;

“relevant Health and Wellbeing Board”, in relation to an integrated care board, has the meaning given by section 14Z52(7).”

- (3) In section 48 (power to obtain information from NHS foundation trust)—
- (a) after subsection (1) insert—
 

“(1A) An integrated care board may require any of its partner NHS foundation trusts to provide it with any information that it requires.”;
  - (b) for subsection (2) substitute—
 

“(2) Information required under this section must be provided in such form, and at such time or within such period, as may be specified by the person imposing the requirement.”
- (4) In Schedule 4 (NHS trusts: constitution etc), in paragraph 13—
- (a) the existing provision becomes sub-paragraph (1);
  - (b) after that sub-paragraph insert—
 

“(2) An integrated care board may require any of its partner NHS trusts to provide it with any information that it requires.

(3) Information required under sub-paragraph (2) must be provided in such form, and at such time or within such period, as may be specified by the integrated care board.”



### *Integrated care partnerships*

## **26 Integrated care partnerships and strategies**

- (1) The Local Government and Public Involvement in Health Act 2007 is amended in accordance with subsections (2) to (6).
- (2) In section 104 (interpretation: partner authorities), in subsection (2), for paragraph (ja) substitute—
  - “(ja) an integrated care board;”.
- (3) In section 116 (health and social care: joint strategic needs assessments)—
  - (a) in subsection (4), for paragraph (b) substitute—
    - “(b) each of its partner integrated care boards;”;
  - (b) after subsection (5) insert—
    - “(5A) The responsible local authority must give a copy of each assessment of relevant needs prepared under this section to any integrated care partnership established under section 116ZA whose area coincides with or includes the whole or part of the area of the responsible local authority.”;
  - (c) in subsections (6) and (7), for “clinical commissioning group”, in each place it occurs, substitute “integrated care board”;
  - (d) in subsection (8), for “clinical commissioning groups” substitute “integrated care boards”;
  - (e) in subsections (8A) and (9), for “clinical commissioning group”, in each place it occurs, substitute “integrated care board”.
- (4) After section 116 insert—

### **“116ZA Integrated care partnerships**

- (1) An integrated care board and each responsible local authority whose area coincides with or falls wholly or partly within the board’s area must establish a joint committee for the board’s area (an “integrated care partnership”).
- (2) The integrated care partnership for an area is to consist of—
  - (a) one member appointed by the integrated care board,
  - (b) one member appointed by each of the responsible local authorities, and
  - (c) any members appointed by the integrated care partnership.
- (3) An integrated care partnership may determine its own procedure (including quorum).

### **116ZB Integrated care strategies**

- (1) An integrated care partnership must prepare a strategy (an “integrated care strategy”) setting out how the assessed needs in relation to its area are to be met by the exercise of functions of—
  - (a) the integrated care board for its area,
  - (b) NHS England, or

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- (c) the responsible local authorities whose areas coincide with or fall wholly or partly within its area.
- (2) In preparing a strategy under this section, an integrated care partnership 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).
- (3) In preparing a strategy under this section, an integrated care partnership must have regard to—
  - (a) the mandate published by the Secretary of State under section 13A of the National Health Service Act 2006, and
  - (b) any guidance issued by the Secretary of State.
- (4) In preparing a strategy under this section, an integrated care partnership must—
  - (a) involve the Local Healthwatch organisations whose areas coincide with or fall wholly or partly within its area, and
  - (b) involve the people who live or work in that area.
- (5) An integrated care partnership may include in a strategy under this section a statement of its views on how arrangements for the provision of health-related services in its area could be more closely integrated with arrangements for the provision of health services and social care services in that area.
- (6) Each time that an integrated care partnership receives an assessment of relevant needs under section 116(5A) it must—
  - (a) consider whether the current integrated care strategy should be revised, and
  - (b) if so, prepare a revised integrated care strategy under subsection (1).
- (7) An integrated care partnership must—
  - (a) publish each integrated care strategy, and
  - (b) give a copy of each integrated care strategy to—
    - (i) each responsible local authority whose area coincides with or falls wholly or partly within its area, and
    - (ii) each partner integrated care board of those responsible local authorities.
- (8) In this section—
  - (a) “assessed needs”, in relation to the area of an integrated care partnership, means the needs assessed under section 116 in relation to the areas of the responsible local authorities so far as those needs relate to the integrated care partnership’s area;
  - (b) “partner integrated care board”, in relation to a responsible local authority, has the same meaning as in section 116;
  - (c) “health services”, “health-related services” and “social care services” have the same meaning as in section 195 of the Health and Social Care Act 2012.”
- (5) In section 116A (health and social care: joint health and wellbeing strategies)—
  - (a) in the heading, after “joint” insert “local”;
  - (b) for subsections (1) and (2) substitute—

- “(1) This section applies where a responsible local authority and each of its partner integrated care boards receive an integrated care strategy under section 116ZB(7)(b).
- (2) The responsible local authority and each of its partner integrated care boards must prepare a strategy (“a joint local health and wellbeing strategy”) setting out how the assessed needs in relation to the responsible local authority’s area are to be met by the exercise of functions of—
- (a) the responsible local authority,
  - (b) its partner integrated care boards, or
  - (c) NHS England.
- (2A) But the responsible local authority and its partner integrated care boards need not prepare a new joint local health and wellbeing strategy if, having considered the integrated care strategy, they consider that the existing joint local health and wellbeing strategy is sufficient.”;
- (c) in subsection (3)—
- (i) for “clinical commissioning groups” substitute “integrated care boards”;
  - (ii) after “the extent to which the” insert “assessed”;
- (d) in subsection (4)—
- (i) for “clinical commissioning groups” substitute “integrated care boards”;
  - (ii) before paragraph (a) insert—
    - “(za) the integrated care strategy prepared under section 116ZB,”;
- (e) in subsections (5) and (7), for “clinical commissioning groups” substitute “integrated care boards”;
- (f) in subsection (8), for paragraph (a) (including the “and” at the end) substitute—
- “(a) “partner integrated care board”, in relation to a responsible local authority, has the same meaning as in section 116,
  - (aa) “assessed needs”, in relation to the area of a local authority, means the needs assessed in relation to its area under section 116, and”.
- (6) For section 116B substitute—

**“116B Duty to have regard to assessments and strategies**

- (1) A responsible local authority and each of its partner integrated care boards must, in exercising any functions, have regard to the following so far as relevant—
- (a) any assessment of relevant needs prepared under section 116 in relation to the responsible local authority’s area,
  - (b) any integrated care strategy prepared under section 116ZB in relation to an area that coincides with or includes the whole or part of the responsible local authority’s area, and

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- (c) any joint local health and wellbeing strategy prepared under section 116A by the responsible local authority and its partner integrated care boards.
- (2) NHS England 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 following so far as relevant—
  - (a) any assessment of relevant needs prepared under section 116 in relation to that area,
  - (b) any integrated care strategy prepared under section 116ZB in relation to an area that coincides with or includes the whole or part of that area, and
  - (c) any joint local health and wellbeing strategy prepared under section 116A by the responsible local authority and its partner integrated care boards.”
- (7) In the following provisions after “joint” insert “local”—
  - (a) section 17(6)(g) and (h) of the National Health Service (Wales) Act 2006;
  - (b) sections 26(7) and 27(4) of the Children and Families Act 2014.

*Integrated care system: financial controls*

## 27 NHS England’s financial responsibilities

For sections 223C to 223E of the National Health Service Act 2006 substitute—

**“223C Financial duties of NHS England: expenditure**

- (1) NHS England must exercise its functions with a view to ensuring that expenditure incurred by the following bodies in a financial year (taken together) does not exceed the aggregate of any sums received by them in the year—
  - (a) NHS England;
  - (b) integrated care boards.
- (2) The Secretary of State may by direction—
  - (a) specify descriptions of expenditure that are, or are not, to be treated for the purposes of this section as expenditure incurred by a body, or expenditure incurred by it in a particular financial year;
  - (b) specify descriptions of sums that are, or are not, to be treated for the purposes of this section as having been received by a body, or as having been received by it in a particular financial year;
  - (c) provide for sums received by NHS England under section 223B in a year but not spent to be treated for the purposes of this section as expenditure incurred by it in a particular financial year;
  - (d) provide for sums received by an integrated care board under section 223G in a year but not spent to be treated for the purposes of this section as expenditure incurred by it in a particular financial year.
- (3) For the purposes of this section any sum allotted to NHS England for a year under section 223B is to be treated as received by it in that year (subject to any direction under subsection (2)(b)).

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### **223CA NHS England: banking facilities**

The Secretary of State may by direction require NHS England to use banking facilities specified in the direction for any purposes so specified.

### **223D Financial duties of NHS England: controls on total resource use**

- (1) NHS England must exercise its functions with a view to ensuring that, in respect of each financial year—
  - (a) total capital resource use does not exceed the limit specified in a direction by the Secretary of State;
  - (b) total revenue resource use does not exceed the limit specified in a direction by the Secretary of State.
- (2) In subsection (1) “total capital resource use” and “total revenue resource use” means the use of capital resources or (as the case may be) revenue resources by relevant NHS bodies, other than use that consists of the transfer of resources between relevant NHS bodies.
- (3) In subsection (2) “relevant NHS bodies” means—
  - (a) NHS England,
  - (b) integrated care boards,
  - (c) NHS trusts established under section 25, and
  - (d) NHS foundation trusts.
- (4) A direction under subsection (1)(a) or (b) specifying a limit in relation to a financial year may be varied by a subsequent direction only if—
  - (a) NHS England agrees to the change,
  - (b) a parliamentary general election takes place, or
  - (c) the Secretary of State considers that there are exceptional circumstances which make the variation necessary.
- (5) The Secretary of State must publish and lay before Parliament any directions under this section.
- (6) Any reference in this Chapter to the use of capital resources or revenue resources is a reference to their expenditure, consumption or reduction in value.

### **223E Financial duties of NHS England: additional controls on resource use**

- (1) The Secretary of State may direct NHS England to ensure—
  - (a) that relevant capital resource use in a financial year which is attributable to matters specified in the direction does not exceed an amount so specified;
  - (b) that relevant revenue resource use in a financial year which is attributable to matters specified in the direction does not exceed an amount so specified.

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- (2) In subsection (1) “relevant capital resource use” and “relevant revenue resource use” means the use of capital resources or (as the case may be) revenue resources by NHS England and integrated care boards.
- (3) The Secretary of State may direct NHS England to ensure that NHS England’s use of revenue resources in a financial year which is attributable to such matters relating to administration as are specified in the direction does not exceed an amount so specified.”

## **28 Expansion of NHS England’s duties in respect of expenditure**

In section 223C of the National Health Service Act 2006 (as substituted by section 27 of this Act), in subsection (1), after paragraph (b) insert—

- “(c) NHS trusts established under section 25;
- (d) NHS foundation trusts.”

## **29 Financial responsibilities of integrated care boards and their partners**

- (1) The National Health Service Act 2006 is amended as follows.
- (2) For the italic heading before section 223G substitute—

*“Integrated care boards”.*

- (3) After section 223GA insert—

### **“223GB Power to impose financial requirements on integrated care boards**

- (1) NHS England may give integrated care boards directions about their management or use of financial or other resources.
- (2) The directions that may be given include a direction imposing limits on expenditure or resource use by integrated care boards.
- (3) NHS England must publish any directions under this section.

### **223GC Financial duties of integrated care boards: expenditure limits**

- (1) An integrated care board must exercise its functions with a view to ensuring that expenditure incurred by the board in a financial year does not exceed the sums received by it in that year.
- (2) NHS England may by direction—
  - (a) specify descriptions of expenditure that are, or are not, to be treated for the purposes of this section as expenditure incurred by an integrated care board, or expenditure incurred by it in a particular financial year;
  - (b) specify descriptions of sums that are, or are not, to be treated for the purposes of this section as having been received by an integrated care board, or as having been received by it in a particular financial year;

- (c) provide for sums received by an integrated care board under section 223G in a year but not spent to be treated for the purposes of this section as expenditure incurred by it in a particular financial year.
- (3) For the purposes of this section any sum allotted to an integrated care board for a year under section 223G is to be treated as received by it in that year (subject to any direction under subsection (2)(b)).

#### **223GD Integrated care boards: banking facilities**

The Secretary of State may give integrated care boards directions requiring them to use specified banking facilities for any specified purposes.”

- (4) Omit sections 223H to 223J (financial duties of clinical commissioning groups).
- (5) After section 223K insert—

*“Joint duties of an integrated care board and its partner NHS trusts and NHS foundation trusts*

#### **223L Joint financial objectives for integrated care boards etc**

- (1) NHS England may set joint financial objectives for integrated care boards and their partner NHS trusts and NHS foundation trusts.
- (2) An integrated care board and its partner NHS trusts and NHS foundation trusts must seek to achieve any financial objectives set under this section.
- (3) Financial objectives under this section may apply to—
  - (a) integrated care boards and their partner NHS trusts and NHS foundation trusts generally,
  - (b) a particular integrated care board and its partner NHS trusts and NHS foundation trusts, or
  - (c) an integrated care board of a particular description and its partner NHS trusts and NHS foundation trusts.

#### **223M Financial duties of integrated care boards etc: use of resources**

- (1) Each integrated care board and its partner NHS trusts and NHS foundation trusts must exercise their functions with a view to ensuring that, in respect of each financial year—
  - (a) local capital resource use does not exceed the limit specified in a direction by NHS England;
  - (b) local revenue resource use does not exceed the limit specified in a direction by NHS England.
- (2) In this section “local capital resource use” and “local revenue resource use” means the use of capital resources or (as the case may be) revenue resources by the integrated care board and its partner NHS trusts and NHS foundation trusts, other than use that consists of the transfer of resources between those bodies.

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- (3) Where an NHS trust or NHS foundation trust is the partner of more than one integrated care board, its use of capital resources or revenue resources is to be apportioned for the purposes of this section to one or more of the integrated care boards in such manner as may be provided for in a direction by NHS England.
- (4) NHS England may by direction make provision for determining to which integrated care board, NHS trust or NHS foundation trust a use of capital resources or revenue resources is to be attributed for the purposes of this section.

### **223N Financial duties of integrated care boards etc: additional controls on resource use**

- (1) NHS England may direct an integrated care board and its partner NHS trusts and NHS foundation trusts to exercise their functions with a view to—
  - (a) ensuring that local capital resource use in a financial year which is attributable to matters specified in the direction does not exceed an amount so specified;
  - (b) ensuring that local revenue resource use in a financial year which is attributable to matters specified in the direction does not exceed an amount so specified.
- (2) A direction under subsection (1) may—
  - (a) specify descriptions of resources which must, or must not, be treated as local capital resources or local revenue resources for the purposes of the direction;
  - (b) specify uses of local capital resources or local revenue resources which must, or must not, be taken into account for the purposes of the direction.
- (3) Any directions given under section 223M(3) or (4) apply for the purposes of this section as they apply for the purposes of section 223M.
- (4) In this section “local capital resource use” and “local revenue resource use” have the meaning given by section 223M(2).

*Directions about resources etc to be taken into account*

### **223O Resources etc relevant to section 223D, 223E or 223M**

- The Secretary of State may give directions, in relation to a financial year—
- (a) specifying descriptions of resources which must, or must not, be treated as capital resources or revenue resources for the purposes of section 223D, 223E or 223M;
  - (b) specifying uses of capital resources or revenue resources which must, or must not, be taken into account for the purposes of section 223D, 223E or 223M.”



### **30 Expansion of financial duties of integrated care boards and their partners**

- (1) The National Health Service Act 2006 is amended as follows.
- (2) Omit section 223GC (inserted by section 29 of this Act).
- (3) After section 223L (inserted by section 29 of this Act) insert—

#### **“223LA Financial duties of integrated care boards etc: expenditure limits**

- (1) An integrated care board and its partner NHS trusts and NHS foundation trusts must exercise their functions with a view to ensuring that their expenditure in a financial year (taken together) does not exceed the aggregate of any sums received by them in the year.
- (2) Where an NHS trust or NHS foundation trust is the partner of more than one integrated care board its receipts and expenditure are to be apportioned for the purposes of this section to one or more of the integrated care boards in such manner as may be provided for in a direction by NHS England.
- (3) NHS England may by direction—
  - (a) specify descriptions of expenditure that are, or are not, to be treated for the purposes of this section as expenditure incurred by a body, or expenditure incurred by it in a particular financial year;
  - (b) specify descriptions of sums that are, or are not, to be treated for the purposes of this section as having been received by a body, or as having been received by it in a particular financial year;
  - (c) provide for sums received by an integrated care board under section 223G in a year but not spent to be treated for the purposes of this section as expenditure by it in a particular financial year.
- (4) For the purposes of this section any sum allotted to an integrated care board for a year under section 223G is to be treated as received by it in that year (subject to any direction under subsection (3)(b)).”

#### *Integrated care system: reviews and further amendments*

### **31 Care Quality Commission reviews etc of integrated care system**

- (1) Chapter 3 of Part 1 of the Health and Social Care Act 2008 (quality of health and social care) is amended as follows.
- (2) After section 46A (inserted by section 163 of this Act) insert—

#### **“46B Reviews and performance assessments: integrated care system**

- (1) The Commission must, in accordance with this section—
  - (a) conduct reviews of—
    - (i) the provision of relevant health care, and adult social care, within the area of each integrated care board, and
    - (ii) the exercise of the functions of the following in relation to the provision of that care within the area of each integrated care

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- board: the board; its partner local authorities; and registered service providers,
- (b) assess the functioning of the system for the provision of relevant health care, and adult social care, within the area of each integrated care board (taking into account, in particular, how those mentioned in paragraph (a)(ii) work together), and
  - (c) publish a report of its assessment.
- (2) The Secretary of State—
- (a) must set, and may from time to time revise, objectives and priorities for the Commission in relation to assessments under this section, and
  - (b) must inform the Commission of the objectives and priorities.
- (3) The priorities set by the Secretary of State under subsection (2)(a) must include priorities relating to leadership, the integration of services and the quality and safety of services.
- (4) The Commission—
- (a) must determine, and may from time to time revise, indicators of quality for the purposes of assessments under this section, and
  - (b) must obtain the approval of the Secretary of State in relation to the indicators.
- (5) The Secretary of State may direct the Commission to revise the indicators under subsection (4).
- (6) Different objectives and priorities may be set, and different indicators of quality may be determined, for different cases.
- (7) The Commission—
- (a) must prepare, and may from time to time revise, a statement—
    - (i) setting out the frequency with which reviews under this section are to be conducted and the period to which they are to relate, and
    - (ii) describing the method that it proposes to use in assessing and evaluating the functioning of the system for the provision of relevant health care, and adult social care, within the area of an integrated care board, and
  - (b) must obtain the approval of the Secretary of State in relation to the statement.
- (8) The statement may—
- (a) make different provision about frequency and period of reviews for different cases, and
  - (b) describe different methods for different cases.
- (9) Before preparing or revising a statement under subsection (7) the Commission must consult—
- (a) NHS England, and
  - (b) any other persons it considers appropriate.
- (10) The Secretary of State may direct the Commission to revise the statement under subsection (7).

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- (11) The Commission must publish—
- (a) the objectives and priorities under subsection (2),
  - (b) the indicators of quality under subsection (4), and
  - (c) the statement under subsection (7).
- (12) For the purposes of this section—
- “adult social care” means social care for individuals aged 18 or over;
- “partner local authority”, in relation to an integrated care board, means any English local authority whose area coincides with, or includes the whole or any part of, the area of the integrated care board;
- “registered service provider” means a person registered under Chapter 2 as a service provider;
- “relevant health care” means—
- (a) NHS care, or
  - (b) the promotion and protection of public health.
- (13) Regulations may amend the definition of “relevant health care” to include health care which is provided or commissioned by a public authority (but which does not amount to NHS care).”
- (3) In section 48 (special reviews and investigations), in subsection (2), after “46A” (inserted by section 163 of this Act) insert “or 46B”.
- (4) In section 50 (failings by English local authorities), in subsection (1), after “46A” (inserted by section 163 of this Act) insert “or 46B”.
- (5) In section 162 (orders and regulations: parliamentary control), in subsection (3), after paragraph (c) insert—
- “(c) regulations under section 46B(13) (amendment of definition of relevant health care).”

### **32 Integrated care system: further amendments**

Schedule 4 contains minor and consequential amendments.

#### *Merger of NHS bodies etc*

### **33 Abolition of Monitor and transfer of functions to NHS England**

- (1) Monitor is abolished.
- (2) Schedule 5 contains amendments to transfer Monitor’s functions to NHS England and related amendments.

### **34 Exercise by NHS England of new regulatory functions**

- (1) The National Health Service Act 2006 is amended as follows.
- (2) After section 13SA (inserted by section 11 of this Act) insert—

*“Regulatory functions*

**13SB Minimising conflicts between regulatory and other functions**

- (1) NHS England must make arrangements for—
- (a) minimising the risk of conflicts between the exercise of its regulatory functions and its other functions;
  - (b) managing any conflicts that arise.
- (2) In this Act “regulatory functions”, in relation to NHS England, means—
- (a) its functions under the provisions listed in subsection (3),
  - (b) its functions under Chapter 5A of Part 2 (trust special administrators) in relation to NHS foundation trusts, except for any functions that are conferred on it under section 65DA, 65F or 65G as a commissioner, and
  - (c) any other functions of NHS England so far as exercisable in connection with functions within paragraph (a) or (b).
- (3) Those provisions are—
- (a) in Part 2 of this Act, Chapter 5 (NHS foundation trusts);
  - (b) in Part 3 of the Health and Social Care Act 2012—
    - (i) Chapter 3 (licensing);
    - (ii) Chapter 4 (NHS payment scheme);
    - (iii) Chapter 5 (health special administration);
    - (iv) Chapter 6 (financial assistance in special administration cases).”
- (3) In section 13U (annual report), after subsection (2) insert—
- “(2A) The annual report must include a statement explaining what NHS England has done, during the financial year, to comply with its duties under section 13SB.”
- (4) In section 275 (interpretation), in subsection (1), at the appropriate place insert—
- ““regulatory functions”, in relation to NHS England, has the meaning given by section 13SB.”.

**35 Modification of standard licence conditions**

- (1) Section 100 of the Health and Social Care Act 2012 (modification of standard conditions) is amended as follows.
- (2) After subsection (1) insert—
- “(1A) Before making modifications under subsection (1) that NHS England consider to be a major change, NHS England must—
- (a) carry out an assessment of the likely impact of the modifications, or
  - (b) publish a statement setting out its reasons for concluding that such assessment is not needed.”
- (3) In subsection (2), for “such modifications” substitute “modifications under subsection (1)”.

- (4) In subsection (4), after paragraph (b) insert—  
    “(ba) set out any impact assessment carried out by NHS England under subsection (1A)(a),”.

### **36 Abolition of NHS Trust Development Authority**

- (1) The Special Health Authority called the National Health Service Trust Development Authority is abolished.
- (2) The following are revoked—
- (a) the National Health Service Trust Development Authority (Establishment and Constitution) Order 2012 (S.I. 2012/901);
  - (b) the National Health Service Trust Development Authority Regulations 2012 (S.I. 2012/922);
  - (c) the National Health Service Trust Development Authority (Directions and Miscellaneous Amendments etc.) Regulations 2016 (S.I. 2016/214).
- (3) In section 9 of the Mental Health Units (Use of Force) Act 2018 (investigation of deaths or serious injuries), omit paragraph (d).
- (4) In section 15 of the Domestic Abuse Act 2021 (duty to co-operate with the Domestic Abuse Commissioner), in subsection (7), omit paragraph (e) of the definition of “NHS body in England”.

### **37 Merger of bodies: consequential amendment**

In section 1H of the National Health Service Act 2006 (NHS England and its general functions), in subsection (3)(b), before “so as to secure” insert “, NHS trusts established under section 25 and NHS foundation trusts”.

### **38 Transfer schemes in connection with abolished bodies**

- (1) The Secretary of State may make one or more schemes for the transfer of property, rights and liabilities from Monitor or the National Health Service Trust Development Authority to NHS England.
- (2) The things that may be transferred under a transfer scheme include—
- (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.
- (3) A transfer scheme may—
- (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;

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- (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;
  - (e) make provision which is the same as or similar to the TUPE regulations;
  - (f) make other consequential, supplementary, incidental or transitional provision.
- (4) In subsection (3)(e), “the TUPE regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246).
- (5) In this section references to rights and liabilities include rights and liabilities relating to a contract of employment.

### **39 Transfer schemes under section 38: taxation**

- (1) The Treasury may by regulations make provision varying the way in which a relevant tax has effect in relation to—
- (a) anything transferred under a scheme under section 38, or
  - (b) anything done for the purposes of, or in relation to, a transfer under such a scheme.
- (2) The provision which may be made under subsection (1)(a) includes in particular provision for—
- (a) a tax provision not to apply, or to apply with modifications, in relation to anything transferred;
  - (b) anything transferred to be treated in a specified way for the purposes of a tax provision;
  - (c) the Secretary of State to be required or permitted to determine, or specify the method for determining, anything which needs to be determined for the purposes of any tax provision so far as relating to anything transferred.
- (3) The provision which may be made under subsection (1)(b) includes in particular provision for—
- (a) a tax provision not to apply, or to apply with modifications, in relation to anything done for the purposes of or in relation to the transfer;
  - (b) anything done for the purposes of, or in relation to, the transfer to have or not have a specified consequence or be treated in a specified way;
  - (c) the Secretary of State to be required or permitted to determine, or specify the method for determining, anything which needs to be determined for the purposes of any tax provision so far as relating to anything done for the purposes of, or in relation to, the transfer.
- (4) Regulations under this section are subject to annulment in pursuance of a resolution of the House of Commons.
- (5) In this section—
- “relevant tax” means income tax, corporation tax, capital gains tax, value added tax, stamp duty or stamp duty reserve tax;
  - “tax provision” means a provision of an enactment about a relevant tax.

### *Secretary of State's functions*

#### **40 Duties in respect of research**

In section 1E of the National Health Service Act 2006 (duty as to research), after “must” insert “facilitate or otherwise”.

#### **41 Report on assessing and meeting workforce needs**

After section 1G of the National Health Service Act 2006 (but before the italic heading after it) insert—

##### **“1GA Secretary of State’s duty to report on workforce systems**

- (1) The Secretary of State must, at least once every five years, publish a report describing the system in place for assessing and meeting the workforce needs of the health service in England.
- (2) NHS England and Health Education England must assist in the preparation of a report under this section, if requested to do so by the Secretary of State.”

#### **42 Arrangements for exercise of public health functions**

For section 7A of the National Health Service Act 2006 substitute—

##### **“7A Exercise of Secretary of State’s public health functions**

- (1) The Secretary of State may arrange for any of the public health functions of the Secretary of State to be exercised by one or more relevant bodies.
- (2) In this section “relevant body” means—
  - (a) NHS England,
  - (b) an integrated care board,
  - (c) a local authority (within the meaning of section 2B),
  - (d) a combined authority, or
  - (e) such other body as may be prescribed.
- (3) Arrangements under this section may be made on such terms as may be agreed between the parties including—
  - (a) terms as to payment;
  - (b) terms prohibiting or restricting a relevant body from making delegation arrangements in relation to a function that is exercisable by it by virtue of arrangements under this section.
- (4) In subsection (3)(b) “delegation arrangements” means arrangements made by a person for the exercise of a function by someone else.
- (5) Any rights acquired, or liabilities (including liabilities in tort) incurred, in respect of the exercise by a relevant body of any function by virtue of this section are enforceable by or against that body (and no other person).

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- (6) The reference in subsection (1) to the public health functions of the Secretary of State includes any functions of the Secretary of State exercisable in connection with those functions (including the powers conferred by section 12).”

#### **43 Power of direction: public health functions**

- (1) The National Health Service Act 2006 is amended as follows.  
 (2) After section 7A (inserted by section 42 of this Act) insert—

##### **“7B Directions requiring NHS bodies to exercise public health functions**

- (1) The Secretary of State may by direction provide for any of the public health functions of the Secretary of State to be exercised by one or more relevant bodies.
- (2) In this section “relevant body” means—
- (a) NHS England, or
  - (b) an integrated care board.
- (3) A direction under subsection (1) may include provision prohibiting or restricting the relevant body from making delegation arrangements in relation to a function that is exercisable by it by virtue of the direction.
- (4) In subsection (3) “delegation arrangements” means arrangements made by a person for the exercise of a function by someone else.
- (5) The Secretary of State may make payments to a relevant body in respect of the exercise by it of a function by virtue of a direction under subsection (1).
- (6) The Secretary of State may give directions to an integrated care board as to the exercise by it of any functions by virtue of this section.
- (7) For power to give directions to NHS England as to the exercise of functions, see section 13ZC.
- (8) As soon as reasonably practicable after giving a direction under subsection (1) or (6), the Secretary of State must publish it.
- (9) Any rights acquired, or liabilities (including liabilities in tort) incurred, in respect of the exercise by a relevant body of any function by virtue of this section are enforceable by or against it (and no other person).
- (10) The reference in subsection (1) to the public health functions of the Secretary of State includes any functions of the Secretary of State exercisable in connection with those functions (including the powers conferred by section 12).”
- (3) In section 73 (directions and regulations under Parts 1 and 2), in subsection (1), after paragraph (a) insert—
- “(aa) section 7B.”.

#### **44 Power of direction: investigation functions**

- (1) The National Health Service Act 2006 is amended as follows.



(2) After section 7B (inserted by section 43 of this Act) insert—

**“7C Power of direction: investigation functions**

- (1) The Secretary of State may direct—
  - (a) NHS England, or
  - (b) any other public body,to exercise any of the investigation functions which are specified in the direction.
- (2) A direction under subsection (1) may include provision prohibiting or restricting the body directed from making delegation arrangements in relation to a function that is exercisable by it by virtue of the direction.
- (3) In subsection (2) “delegation arrangements” means arrangements made by a person for the exercise of a function by someone else.
- (4) The Secretary of State may make payments to NHS England or any other body in respect of the exercise by it of a function by virtue of a direction under subsection (1).
- (5) The Secretary of State may give directions to any body on whom functions are conferred by virtue of subsection (1)(b) as to the exercise of those functions.
- (6) For power to give directions to NHS England as to the exercise of functions, see section 13ZC.
- (7) As soon as reasonably practicable after giving a direction under subsection (1) or (5), the Secretary of State must publish it.
- (8) Any rights acquired, or liabilities (including liabilities in tort) incurred, in respect of the exercise by NHS England or any other body of any function by virtue of this section are enforceable by or against it (and no other person).
- (9) In this section “the investigation functions” are functions which, immediately before the coming into force of section 36 of the Health and Care Act 2022, were exercised by the Special Health Authority called the National Health Service Trust Development Authority pursuant to—
  - (a) the National Health Service Trust Development Authority (Healthcare Safety Investigation Branch) Directions 2016 made under sections 7 and 8 of the National Health Service Act 2006, or
  - (b) the National Health Service Trust Development Authority (Healthcare Safety Investigation Branch) (Additional Investigatory Functions in respect of Maternity Cases) Directions 2018 made under sections 7 and 8 of the National Health Service Act 2006.

**7D Transfer schemes in connection with a direction under section 7C**

- (1) The Secretary of State may, in connection with a direction under section 7C, make one or more transfer schemes.
- (2) A “transfer scheme” is a scheme for the transfer to NHS England or any other public body of any property, rights or liabilities relating to the discharge of

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functions pursuant to any directions made by the Secretary of State under the power conferred by section 7C.

- (3) The things that may be transferred under a transfer scheme include—
- (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.
- (4) A transfer scheme may—
- (a) create rights, or impose liabilities, in relation to property or rights transferred;
  - (b) make provision about the continuing effect of things done by, or on behalf of or in relation to 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;
  - (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;
  - (e) make provision for the shared ownership or use of property;
  - (f) make provision which is the same as or similar to the TUPE regulations;
  - (g) make other consequential, supplementary, incidental or transitional provision.
- (5) A transfer scheme may provide—
- (a) for modifications by agreement;
  - (b) for modifications to have effect from the date when the original scheme came into effect.
- (6) In subsection (4)(f), “the TUPE regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246).
- (7) For the purposes of this section—
- (a) references to rights and liabilities include rights and liabilities relating to a contract of employment;
  - (b) references to the transfer of property include the grant of a lease.
- (8) For the purposes of subsection (7)(a)—
- (a) an individual who holds employment in the civil service of the State 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.

### **7E Transfer schemes under section 7D: taxation**

- (1) The Treasury may by regulations make provision varying the way in which a relevant tax has effect in relation to—
- (a) anything transferred under a scheme under section 7D, or

- (b) anything done for the purposes of, or in relation to, a transfer under such a scheme.
- (2) The provision which may be made under subsection (1)(a) includes in particular provision for—
- (a) a tax provision not to apply, or to apply with modifications, in relation to anything transferred;
  - (b) anything transferred to be treated in a specified way for the purposes of a tax provision;
  - (c) the Secretary of State to be required or permitted to determine, or specify the method for determining, anything which needs to be determined for the purposes of any tax provision so far as relating to anything transferred.
- (3) The provision which may be made under subsection (1)(b) includes in particular provision for—
- (a) a tax provision not to apply, or to apply with modifications, in relation to anything done for the purposes of or in relation to the transfer;
  - (b) anything done for the purposes of, or in relation to, the transfer to have or not have a specified consequence or be treated in a specified way;
  - (c) the Secretary of State to be required or permitted to determine, or specify the method for determining, anything which needs to be determined for the purposes of any tax provision so far as relating to anything done for the purposes of, or in relation to, the transfer.
- (4) In this section references to the transfer of property include the grant of a lease.
- (5) In this section—
- “relevant tax” means income tax, corporation tax, capital gains tax, value added tax, stamp duty or stamp duty reserve tax;
- “tax provision” means a provision of an enactment about a relevant tax.”
- (3) In section 73 (directions and regulations under Parts 1 and 2), in subsection (1), after paragraph (aa) (inserted by section 43 of this Act) insert—
- “(ab) section 7C.”
- (4) In section 272 (orders, regulations, rules and directions)—
- (a) in subsection (4), after “subsections” insert “(4A),”, and
  - (b) after that subsection insert—
- “(4A) A statutory instrument containing regulations under section 7E(1) is subject to annulment in pursuance of a resolution of the House of Commons.”

#### **45 General power to direct NHS England**

- (1) The National Health Service Act 2006 is amended as follows.
- (2) Before section 13Z1 (and the italic heading before it) insert—

*“Powers of direction*

**13ZC Secretary of State directions as to exercise of NHS England functions**

- (1) The Secretary of State may give NHS England directions as to the exercise of any of its functions.
- (2) The directions that may be given include a direction as to whether a power is to be exercised or not.
- (3) The directions that may be given include a direction as to—
  - (a) when or how a function is, or is not, to be exercised;
  - (b) conditions that must be met before a function is exercised (for example, conditions relating to the provision of information, consultation or approval);
  - (c) matters to be taken into account in exercising a function.
- (4) For exceptions to the power to give directions under subsection (1), see section 13ZD.
- (5) A direction under subsection (1) must include a statement that the Secretary of State considers the direction to be in the public interest.
- (6) As soon as reasonably practicable after giving a direction under subsection (1), the Secretary of State must publish it.
- (7) The fact that the Secretary of State has a function under any other enactment in relation to NHS England’s exercise of functions is not to be read as limiting the power conferred by subsection (1).
- (8) The reference in subsection (7) to a function of the Secretary of State does not include a function of making subordinate legislation.

**13ZD Power to give directions: exceptions**

- (1) A direction under section 13ZC may not be given in relation to a function relating to the appointment or employment of a person.
- (2) A direction under section 13ZC may not be given in relation to a decision about the services to be provided to a particular individual for or in connection with the prevention, diagnosis or treatment of illness.
- (3) A direction under section 13ZC may not be given in relation to the provision of any drug, medicine or other treatment, or the use of any diagnostic technique, unless NICE has made a recommendation or issued guidance as to its clinical and cost effectiveness and the direction is not inconsistent with that recommendation or guidance.

**13ZE Compliance with directions: significant failure**

- (1) This section applies where—
  - (a) NHS England is given a direction under section 13ZC,

- (b) the direction —
    - (i) states that the Secretary of State considers that NHS England is failing or has failed to discharge any of its functions, and
    - (ii) states that the Secretary of State considers that the failure is significant and explains why,
  - (c) the direction states that it is given for the purposes of addressing that failure, and
  - (d) NHS England fails to comply with the direction.
- (2) The Secretary of State may—
- (a) discharge the functions to which the direction relates, or
  - (b) make arrangements for any other person to discharge them on the Secretary of State’s behalf.
- (3) Where the Secretary of State exercises the power under subsection (2), the Secretary of State must publish the reasons for doing so.
- (4) For the purpose of this section—
- (a) a failure to discharge a function includes a failure to discharge it properly, and
  - (b) a failure to discharge a function properly includes a failure to discharge it consistently with what the Secretary of State considers to be the interests of the health service.

### **13ZF Secretary of State directions to provide information**

- (1) The Secretary of State may direct NHS England to provide the Secretary of State with any documents or other information that may be specified in the direction.
  - (2) The directions that may be given include a direction to provide documents or other information that NHS England would need to obtain from others in the exercise of some other power.
  - (3) The directions may include provision as to—
    - (a) the form or manner in which the documents or information must be provided;
    - (b) the time at which or period within which the documents or information must be provided.”
- (3) Omit section 13Z2 (failure to discharge functions) and the italic heading before it.
- (4) In Schedule A1 (constitution of NHS England), omit paragraph 14 and the italic heading before it.

## **46 Reconfiguration of services: intervention powers**

- (1) After section 68 of the National Health Service Act 2006 insert—

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*“Reconfiguration of NHS services*

**68A Reconfiguration of NHS services**

Schedule 10A confers intervention powers on the Secretary of State in relation to the reconfiguration of NHS services.”

- (2) Schedule 6 inserts into the National Health Service Act 2006 a new Schedule 10A to that Act (intervention powers in relation to the reconfiguration of NHS services).

**47 Review into NHS supply chains**

- (1) The Secretary of State must carry out a review into the risk of slavery and human trafficking taking place in relation to people involved in NHS supply chains.
- (2) The Secretary of State may determine which NHS supply chains to consider as part of the review or otherwise limit the scope of the review.
- (3) But the review must at least consider a significant proportion of NHS supply chains for cotton-based products in relation to which companies formed under section 223 of the National Health Service Act 2006 (taken as a whole) exercise functions.
- (4) The Secretary of State must publish and lay before Parliament a report on the outcome of the review before the end of the period of 18 months beginning with the day on which this section comes into force.
- (5) The report must describe—
- (a) the scope of the review, and
  - (b) the methodology used in carrying out the review.
- (6) The report must include any views of the Secretary of State as to steps that should be taken to mitigate the risk mentioned in subsection (1).
- (7) NHS England must assist in the carrying out of the review or the preparation of the report under this section, if requested to do so by the Secretary of State.
- (8) In this section—

“health service in England” means the health service continued under section 1(1) of the National Health Service Act 2006;

“NHS supply chain” means the supply chain for providing goods or services for the purposes of the health service in England;

“slavery and human trafficking” has the meaning given by section 54(12) of the Modern Slavery Act 2015.

*NHS trusts*

**48 NHS trusts in England**

In the Health and Social Care Act 2012, omit section 179 (abolition of NHS trusts in England).

#### **49 Removal of power to appoint trust funds and trustees**

In Schedule 4 to the National Health Service Act 2006, omit paragraph 10 (power to appoint trustees for an NHS trust) and the italic heading before it.

#### **50 Sections 48 and 49: consequential amendments**

Schedule 7 contains amendments that are consequential on sections 48 and 49.

#### **51 Licensing of NHS trusts**

- (1) In the National Health Service (Licence Exemptions, etc) Regulations 2013 ([S.I. 2013/2677](#)), omit regulation 4 (which exempts NHS trusts in England from the requirement to hold a licence).
- (2) After section 87 of the Health and Social Care Act 2012 insert—

##### **“87A Application and grant: NHS trusts**

- (1) An NHS trust established under section 25 of the National Health Service Act 2006 is to be treated, on its establishment, as—
  - (a) having made an application for a licence under section 85, and
  - (b) having met the criteria for holding a licence for the time being published under section 86.
- (2) An NHS trust established under section 25 of the National Health Service Act 2006 before the day on which section 51(1) of the Health and Care Act 2022 comes into force is to be treated, for the purposes of subsection (1), as having been established on that day.”

#### **52 NHS trusts: wider effect of decisions**

After section 26 of the National Health Service Act 2006 insert—

##### **“26A Duty to have regard to wider effect of decisions**

- (1) In making a decision about the exercise of its functions, an NHS trust established under section 25 must have regard to all likely effects of the decision in relation to—
  - (a) the health and well-being of the people of England;
  - (b) the quality of services provided to individuals—
    - (i) by relevant bodies, or
    - (ii) in pursuance of arrangements made by relevant bodies, for or in connection with the prevention, diagnosis or treatment of illness, as part of the health service in England;
  - (c) efficiency and sustainability in relation to the use of resources by relevant bodies for the purposes of the health service in England.
- (2) In subsection (1)—
  - (a) the reference to a decision does not include a reference to a decision about the services to be provided to a particular individual for or in connection with the prevention, diagnosis or treatment of illness;

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- (b) the reference to effects of a decision in relation to the health and well-being of the people of England includes a reference to its effects in relation to inequalities between the people of England with respect to their health and well-being;
- (c) the reference to effects of a decision in relation to the quality of services provided to individuals includes a reference to its effects in relation to inequalities between individuals with respect to the benefits that they can obtain from those services.

(3) In discharging the duty under this section, NHS trusts must have regard to guidance published by NHS England under section 13NB.

(4) In this section “relevant bodies” means—

- (a) NHS England,
- (b) integrated care boards,
- (c) NHS trusts established under section 25, and
- (d) NHS foundation trusts.”

### **53 NHS trusts: duties in relation to climate change**

After section 26A of the National Health Service Act 2006 (inserted by section 52 of this Act) insert—

#### **“26B Duties in relation to climate change etc**

- (1) An NHS trust established under section 25 must, in the exercise of its functions, have regard to the need to—
  - (a) contribute towards compliance with—
    - (i) section 1 of the Climate Change Act 2008 (UK net zero emissions target), and
    - (ii) section 5 of the Environment Act 2021 (environmental targets), and
  - (b) adapt to any current or predicted impacts of climate change identified in the most recent report under section 56 of the Climate Change Act 2008.
- (2) In discharging the duty under this section, NHS trusts must have regard to guidance published by NHS England under section 13ND.”

### **54 Oversight and support of NHS trusts**

(1) The National Health Service Act 2006 is amended as follows.

(2) After section 27 insert—

#### **“27A Oversight and support of NHS trusts**

NHS England must—

- (a) monitor NHS trusts established under section 25 in the carrying out of their functions, and



- (b) provide such advice, guidance or other support as it considers appropriate to help NHS trusts established under section 25 in the carrying out of their functions.”
- (3) In Schedule 4—
  - (a) in paragraph 12 (reports etc), in sub-paragraph (1), for “the Secretary of State”, in both places it occurs, substitute “NHS England”;
  - (b) in paragraph 13 (provision of information by NHS trusts), in sub-paragraph (1) (as created by section 25(4) of this Act)—
    - (i) after “the Secretary of State” insert “or NHS England”;
    - (ii) for “he” substitute “the Secretary of State or NHS England”.

## 55 Directions to NHS trusts

- (1) The National Health Service Act 2006 is amended as follows.
- (2) After section 27A (inserted by section 54 of this Act) insert—

### “27B NHS England’s directions to NHS trusts

- (1) NHS England may give directions to an NHS trust established under section 25 about its exercise of any functions.
- (2) In so far as a direction under this section conflicts with a direction under section 8 or paragraph 25(3) of Schedule 4, it is of no effect.”
- (3) In section 73 (directions and regulations under Parts 1 and 2), in subsection (1), after paragraph (ba) (inserted by section 13 of this Act) insert—
  - “(bb) section 27B,”.
- (4) In Schedule 4—
  - (a) in paragraph 20 (additional income), in sub-paragraph (2)—
    - (i) omit the “and” at the end of paragraph (a);
    - (ii) at the end of paragraph (b) insert “, and
    - (c) in circumstances specified in directions under section 27B, with the consent of NHS England.”;
  - (b) in paragraph 25 (staff), in sub-paragraph (3), at the end insert “and any directions given by NHS England under section 27B”.

## 56 Recommendations about restructuring of NHS trusts

After section 27B of the National Health Service Act 2006 (inserted by section 55 of this Act) insert—

### “27C Recommendations about restructuring

- (1) NHS England may—
  - (a) make recommendations to NHS trusts for or in connection with the making of restructuring applications;
  - (b) take such other steps as it considers appropriate to facilitate restructuring applications involving NHS trusts.

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- (2) In this section “restructuring application”, in relation to an NHS trust, means an application by the NHS trust under—
- (a) section 56 (mergers involving NHS foundation trusts);
  - (b) section 56A (acquisitions by NHS foundation trusts);
  - (c) section 69A (transfer of property etc between NHS bodies);
  - (d) paragraph 28 of Schedule 4 (dissolution of NHS trusts).”

## 57 Intervention in NHS trusts

After section 27C of the National Health Service Act 2006 (inserted by section 56 of this Act) insert—

### “27D Intervention in NHS trusts: recommendations etc by NHS England

- (1) If NHS England considers that Secretary of State ought to make an order under section 66(2) or 68(2) in relation to an NHS trust established under section 25, NHS England must—
- (a) make a recommendation to that effect,
  - (b) set out its reasons for the recommendation, and
  - (c) make any recommendations it considers appropriate as to the contents of the order.
- (2) NHS England must make any inquiries, and provide any other assistance, that the Secretary of State may require in connection with deciding whether to make an order under section 66(2) or 68(2) in relation to an NHS trust established under section 25 and, if so, on what terms.”

## 58 NHS trusts: conversion to NHS foundation trusts and dissolution

- (1) The National Health Service Act 2006 is amended as follows.
- (2) In section 33 (application by NHS trusts to become NHS foundation trusts), in subsection (1), omit “, if the application is supported by the Secretary of State”.
- (3) In section 35 (authorisation of NHS foundation trusts), in subsection (1), after “if” insert “the Secretary of State approves the authorisation and”.
- (4) In section 57 (supplementary provision in connection with mergers and acquisitions with NHS foundation trusts), in subsection (5), after “Secretary of State” insert “or NHS England”.
- (5) In Schedule 4—
- (a) in paragraph 28 (power to dissolve NHS trusts)—
    - (i) in sub-paragraph (1), after “Secretary of State” insert “or NHS England”;
    - (ii) after sub-paragraph (1) insert—
 

“(1A) An order under this paragraph may be made by NHS England only with the approval of the Secretary of State.”;
    - (iii) in sub-paragraphs (2)(b) and (3), after “the Secretary of State” insert “or NHS England”;
  - (b) in paragraph 29 (transfers), for sub-paragraph (1) substitute—

“(1) If an NHS trust is dissolved under paragraph 28, the Secretary of State or NHS England may by order transfer, or provide for the transfer of, the property and liabilities of the NHS trust to the Secretary of State or an NHS body; and such an order may include provisions corresponding to those of paragraph 9.”;

- (c) in paragraph 30 (transfers: pensions etc), in sub-paragraph (1), after “he” insert “or NHS England”.

## **59 Appointment of chair of NHS trusts**

In paragraph 3(1)(a) of Schedule 4 to the National Health Service Act 2006 (appointment of chair of board of directors of NHS trust), for “the Secretary of State” substitute “NHS England”.

## **60 Financial objectives for NHS trusts**

In paragraph 2 of Schedule 5 of the National Health Service Act 2006 (financial obligations of NHS trusts), for sub-paragraphs (2) and (3) substitute—

“(2) NHS England may set financial objectives for NHS trusts.

(3) An NHS trust must achieve any financial objectives set under sub-paragraph (2).

(4) Financial objectives under sub-paragraph (2) may apply to NHS trusts generally, or to a particular NHS trust or NHS trusts of a particular description.”

### *NHS foundation trusts*

## **61 Licensing of NHS foundation trusts**

In section 88 of the Health and Social Care Act 2012 (application and grant of licenses: NHS foundation trusts), for subsection (1) substitute—

“(1) This section applies where—

- (a) an NHS trust becomes an NHS foundation trust in pursuance of section 36 of the National Health Service Act 2006 (effect of authorisation of NHS foundation trust), or
- (b) an NHS foundation trust is established under sections 56 or 56B of that Act (mergers and separations).”

## **62 Capital spending limits for NHS foundation trusts**

(1) The National Health Service Act 2006 is amended as follows.

(2) After section 42A insert—

### **“42B Limits on capital expenditure**

(1) NHS England may make an order imposing a limit on the capital expenditure of an NHS foundation trust in respect of a single financial year.

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*Status: This is the original version (as it was originally enacted).*

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- (2) The order must specify—
  - (a) the trust,
  - (b) the capital expenditure limit, and
  - (c) the financial year to which the limit relates.
- (3) NHS England must consult the trust before making the order.
- (4) NHS England must publish each order under this section.
- (5) An order under this section may be made at any time during or before the financial year to which it relates.
- (6) A trust that is the subject of an order under this section must not exceed the capital expenditure limit imposed by the order during the financial year to which it relates.
- (7) In this section “capital expenditure”, in relation to an NHS foundation trust, means expenditure of the trust which falls to be capitalised in its annual accounts.

#### **42C Guidance in relation to orders under section 42B**

- (1) NHS England must publish guidance about the exercise of its power to make orders under section 42B, including guidance about—
    - (a) the circumstances in which it is likely to make an order, and
    - (b) the method it will use to determine the capital expenditure limit.
  - (2) NHS England must consult the Secretary of State before it publishes guidance, or revised guidance, under this section.
  - (3) NHS England must have regard to the guidance in exercising its power to make orders under section 42B.”
- (3) In section 64 (orders and regulations under Chapter 5), in subsection (1), after “regulations” insert “, other than the power to make an order under section 42B,”.

### **63 Accounts, reports and forward plans**

- (1) In the National Health Service Act 2006—
  - (a) in section 43, omit subsections (3B) and (3C) (requirements relating to content etc of forward plan for NHS foundation trusts);
  - (b) in paragraph 27 of Schedule 7, omit sub-paragraphs (2) and (3) (which require the forward plan to be prepared by the directors etc).
- (2) In the Health and Social Care Act 2012—
  - (a) omit section 155 (accounts: transfer of functions relating to accounts from the regulator to the Secretary of State);
  - (b) in section 156 omit—
    - (i) subsection (3) (power to provide for content of annual reports to be prescribed by regulations rather than determined by the regulator);
    - (ii) subsection (4) (duty to give forward plan to Secretary of State, rather than to the regulator).

## **64 NHS foundation trusts: joint exercise of functions**

After section 47 of the National Health Service Act 2006 insert—

### **“47A Joint exercise of functions**

An NHS foundation trust may enter into arrangements for the carrying out, on such terms as the NHS foundation trust considers appropriate, of any of its functions jointly with any other person.”

## **65 NHS foundation trusts: mergers, acquisitions and separations**

(1) The National Health Service Act 2006 is amended as follows.

(2) In section 56 (mergers)—

- (a) in subsection (2), omit paragraph (a);
- (b) for subsection (4) substitute—

“(4) NHS England must grant the application if—

- (a) it is satisfied that such steps as are necessary to prepare for the dissolution of the trusts and the establishment of the new trust have been taken, and
- (b) the Secretary of State approves the grant of the application, and must otherwise refuse the application.”

(3) In section 56A (acquisitions)—

- (a) in subsection (3), omit paragraph (a) and the “and” at the end;
- (b) for subsection (4) substitute—

“(4) NHS England must grant the application if—

- (a) it is satisfied that such steps as are necessary to prepare for the acquisition have been taken, and
- (b) the Secretary of State approves the grant of the application, and must otherwise refuse the application.”

(4) In section 56B (separations), for subsection (4) substitute—

“(4) NHS England must grant the application if—

- (a) 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, and
- (b) the Secretary of State approves the grant of the application, and must otherwise refuse the application.”

## **66 Transfers on dissolution of NHS foundation trusts**

In section 57A of the National Health Service Act 2006 (dissolution)—

- (a) in subsection (3), omit paragraph (a) and the “and” at the end;
- (b) in subsection (4), for paragraph (b) substitute—
  - “(b) transferring, or providing for the transfer of, the property and liabilities (including criminal liabilities) to another NHS

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*Status: This is the original version (as it was originally enacted).*

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foundation trust, an NHS trust established under section 25 or the Secretary of State.”;

(c) after subsection (4) insert—

“(5) The order must include provision for the transfer of any employees of the NHS foundation trust that is dissolved.”

## 67 NHS foundation trusts: wider effect of decisions

In the National Health Service Act 2006, after section 63 insert—

### “63A Duty to have regard to wider effect of decisions

- (1) In making a decision about the exercise of its functions, an NHS foundation trust must have regard to all likely effects of the decision in relation to—
- (a) the health and well-being of the people of England;
  - (b) the quality of services provided to individuals—
    - (i) by relevant bodies, or
    - (ii) in pursuance of arrangements made by relevant bodies, for or in connection with the prevention, diagnosis or treatment of illness, as part of the health service in England;
  - (c) efficiency and sustainability in relation to the use of resources by relevant bodies for the purposes of the health service in England.
- (2) In subsection (1)—
- (a) the reference to a decision does not include a reference to a decision about the services to be provided to a particular individual for or in connection with the prevention, diagnosis or treatment of illness;
  - (b) the reference to effects of a decision in relation to the health and well-being of the people of England includes a reference to its effects in relation to inequalities between the people of England with respect to their health and well-being;
  - (c) the reference to effects of a decision in relation to the quality of services provided to individuals includes a reference to its effects in relation to inequalities between individuals with respect to the benefits that they can obtain from those services.
- (3) In discharging the duty under this section, NHS foundation trusts must have regard to guidance published by NHS England under section 13NB.
- (4) In this section “relevant bodies” means—
- (a) NHS England,
  - (b) integrated care boards,
  - (c) NHS trusts established under section 25, and
  - (d) NHS foundation trusts.”

## 68 NHS foundation trusts: duties in relation to climate change

After section 63A of the National Health Service Act 2006 (inserted by section 67 of this Act) insert—

**“63B Duties in relation to climate change etc**

- (1) An NHS foundation trust must, in the exercise of its functions, have regard to the need to—
  - (a) contribute towards compliance with—
    - (i) section 1 of the Climate Change Act 2008 (UK net zero emissions target), and
    - (ii) section 5 of the Environment Act 2021 (environmental targets), and
  - (b) adapt to any current or predicted impacts of climate change identified in the most recent report under section 56 of the Climate Change Act 2008.
- (2) In discharging the duty under this section, NHS foundation trusts must have regard to guidance published by NHS England under section 13ND.”

*NHS trusts and NHS foundation trusts***69 Transfer schemes between trusts**

After section 69 of the National Health Service Act 2006 insert—

*“Transfer schemes***69A Transfer schemes: NHS trusts and NHS foundation trusts**

- (1) NHS England may make one or more schemes for the transfer of property, rights and liabilities from a relevant NHS body to another relevant NHS body on an application made to it under this section.
- (2) The application must—
  - (a) be made jointly by the relevant NHS bodies, and
  - (b) state the property, rights or liabilities to be transferred.
- (3) NHS England may grant an application under this section only if it is satisfied that such steps as are necessary to prepare for the transfer have been taken.
- (4) The things that may be transferred under a transfer scheme include—
  - (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.
- (5) A transfer scheme may—
  - (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;

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*Status: This is the original version (as it was originally enacted).*

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- (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;
  - (e) make provision for the shared ownership or use of property;
  - (f) make provision which is the same as or similar to the TUPE regulations;
  - (g) make other consequential, supplementary, incidental or transitional provision.
- (6) A transfer scheme may provide—
- (a) for modifications by agreement;
  - (b) for modifications to have effect from the date when the original scheme came into effect.
- (7) In this section—
- (a) references to rights and liabilities include rights and liabilities relating to a contract of employment;
  - (b) references to the transfer of property include the grant of a lease.
- (8) In this section—
- “relevant NHS body” means—
    - (a) an NHS trust established under section 25;
    - (b) an NHS foundation trust;
  - “the TUPE regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246).”

## **70 Trust special administrators**

Schedule 8 contains amendments to Chapter 5A of the National Health Service Act 2006 (which transfer functions to NHS England in relation to trust special administrators).

### *Joint working and delegation of functions*

## **71 Joint working and delegation arrangements**

- (1) The National Health Service Act 2006 is amended as follows.
- (2) After section 65Z4 (inserted by section 14 of this Act) insert—

### *“Joint working arrangements and delegation*

#### **65Z5 Joint working and delegation arrangements**

- (1) A relevant body may arrange for any functions exercisable by it to be exercised by or jointly with any one or more of the following—
  - (a) a relevant body;



- (b) a local authority (within the meaning of section 2B);
  - (c) a combined authority.
- (2) In this section “relevant body” means—
  - (a) NHS England,
  - (b) an integrated care board,
  - (c) an NHS trust established under section 25,
  - (d) an NHS foundation trust, or
  - (e) such other body as may be prescribed.
- (3) Regulations may—
  - (a) provide that the power in subsection (1) does not apply, or applies only to a prescribed extent, in relation to prescribed functions;
  - (b) impose conditions on the exercise of the power.
- (4) Arrangements under this section may be made on such terms as may be agreed between the parties, including—
  - (a) terms as to payment;
  - (b) terms prohibiting or restricting a body from making delegation arrangements in relation to a function that is exercisable by it by virtue of arrangements under this section.
- (5) In subsection (4)(b) “delegation arrangements” means arrangements made by a body for the exercise of a function by someone else.
- (6) Any rights acquired, or liabilities (including liabilities in tort) incurred, in respect of the exercise by a body of any function by virtue of this section are enforceable by or against that body (and no other person).

### **65Z6 Joint committees and pooled funds**

- (1) This section applies where a function is exercisable jointly (by virtue of section 65Z5 or otherwise) by a relevant body and any one or more of the following—
  - (a) a relevant body;
  - (b) a local authority (within the meaning of section 2B);
  - (c) a combined authority.
- (2) The bodies by whom the function is exercisable jointly may—
  - (a) arrange for the function to be exercised by a joint committee of theirs;
  - (b) arrange for one or more of the bodies, or a joint committee of the bodies, to establish and maintain a pooled fund.
- (3) A pooled fund is a fund—
  - (a) which is made up of payments received in accordance with the arrangements from relevant bodies that are party to the arrangements, and
  - (b) out of which payments may be made in accordance with the arrangements towards expenditure incurred in the exercise of functions in relation to which the arrangements are made.

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- (4) Arrangements under this section may be made on such terms as may be agreed between the parties, including terms as to payment.
- (5) In this section “relevant body” has the meaning given by section 65Z5(2).

**65Z7 Joint working and delegation: guidance by NHS England**

- (1) NHS England may publish guidance for relevant bodies about the exercise of their powers under sections 65Z5 and 65Z6.
- (2) A relevant body must have regard to any guidance published under this section.
- (3) In this section “relevant body” has the meaning given by section 65Z5(2).”
- (3) In section 75(7B)—
  - (a) at the end of paragraph (a) insert “or”;
  - (b) for paragraphs (b) and (c) substitute—
    - “(b) section 65Z5 (joint working and delegation arrangements).”
- (4) In consequence of subsection (2), omit sections 13Z to 13ZB and the italic heading before those sections.

**72 References to functions: treatment of delegation arrangements etc**

- (1) After section 275 of the National Health Service Act 2006 insert—

**“275A References to functions: delegation etc**

- (1) A reference in this Act to the functions of a person includes functions of others that are exercisable by the person by virtue of any provision of any enactment (unless the context otherwise requires).
- (2) Regulations may create exceptions to subsection (1).”
- (2) Schedule 9 contains—
  - (a) amendments that are consequential on this section and other provisions of this Part, and
  - (b) other related amendments.

*Collaborative working*

**73 Repeal of duties to promote autonomy**

- (1) In the National Health Service Act 2006 omit—
  - (a) section 1D (Secretary of State’s duty to promote autonomy);
  - (b) section 13F (NHS Commissioning Board’s duty to promote autonomy).
- (2) In consequence of subsection (1), in the Health and Social Care Act 2012, omit section 5.

## 74 Guidance about joint appointments

After section 13U of the National Health Service Act 2006 insert—

### *“Joint appointments*

#### **13UA Guidance about joint appointments**

- (1) NHS England may publish guidance for a relevant NHS body about the making of a joint appointment to which this section applies.
- (2) A joint appointment to which this section applies is an appointment of a person to a position in—
  - (a) one or more relevant NHS commissioner and one or more relevant NHS provider,
  - (b) one or more relevant NHS body and one or more local authority, or
  - (c) one or more relevant NHS body and one or more combined authority.
- (3) A relevant NHS body must have regard to guidance published under this section.
- (4) NHS England must consult such persons as NHS England considers appropriate—
  - (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 NHS England, significant.
- (5) In this section—
  - “local authority” has the same meaning as in section 2B;
  - “relevant NHS body” means—
    - (a) a relevant NHS commissioner;
    - (b) a relevant NHS provider;
  - “relevant NHS commissioner” means—
    - (a) NHS England;
    - (b) an integrated care board;
  - “relevant NHS provider” means—
    - (a) an NHS trust established under section 25;
    - (b) an NHS foundation trust.”

## 75 Co-operation by NHS bodies etc

- (1) The National Health Service Act 2006 is amended in accordance with subsections (2) and (3).
- (2) In section 72 (co-operation between NHS bodies)—
  - (a) after subsection (1) insert—
    - “(1A) The Secretary of State may publish guidance on the discharge of the duty under subsection (1) in relation to England.
    - (1B) An NHS body other than a Welsh NHS body must have regard to any guidance published under subsection (1A).”;

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- (b) after subsection (4) insert—
  - “(5) In this section “Welsh NHS body” means—
    - (a) an NHS trust established under the National Health Service (Wales) Act 2006,
    - (b) a Special Health Authority established under that Act, or
    - (c) a Local Health Board.”
- (3) In section 82 (co-operation between NHS bodies and local authorities)—
  - (a) the existing words become subsection (1);
  - (b) after that subsection insert—
    - “(2) The Secretary of State may publish guidance on the discharge of the duty under this section in relation to England.
    - (3) The following must have regard to any guidance published under subsection (2)—
      - (a) an NHS body other than a Welsh NHS body;
      - (b) a local authority in England.
    - (4) In this section “Welsh NHS body” means—
      - (a) an NHS trust established under the National Health Service (Wales) Act 2006,
      - (b) a Special Health Authority established under that Act, or
      - (c) a Local Health Board.”
- (4) In the Health and Social Care Act 2012, in section 96 (limits on functions to set or modify licence conditions)—
  - (a) in subsection (2), for paragraph (g) substitute—
    - “(g) for the purpose of enabling, promoting or securing co-operation between providers of health care services for the purposes of the NHS, or between such providers and—
      - (i) NHS bodies, within the meaning of section 72 of the National Health Service Act 2006, or
      - (ii) local authorities in England (and for this purpose “local authority” has the meaning given by section 275(1) of the National Health Service Act 2006);”;
  - (b) in subsection (3), in the words before paragraph (a), for “(f) and (g)” substitute “and (f)”.

## 76 Wider effect of decisions: licensing of health care providers

In section 96 of the Health and Social Care Act 2012 (limits on functions to set or modify licence conditions)—

- (a) in subsection (2), after paragraph (d) insert—
  - “(da) for the purpose of ensuring that decisions relating to the provision of health care services for the purposes of the NHS are made with regard to all their likely effects in relation to the matters referred to in subsection (2A);”;
- (b) after subsection (2) insert—

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*Status: This is the original version (as it was originally enacted).*

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- “(2A) The matters referred to in subsection (2)(da) are—
- (a) the health and well-being of the people of England;
  - (b) the quality of services provided to individuals—
    - (i) by relevant bodies, or
    - (ii) in pursuance of arrangements made by relevant bodies,for or in connection with the prevention, diagnosis or treatment of illness, as part of the health service in England;
  - (c) efficiency and sustainability in relation to the use of resources by relevant bodies for the purposes of the health service in England.

(2B) For the purposes of subsection (2)(da) (as read with subsection (2A))

- (a) a reference to the effects of decisions in relation to the health and well-being of the people of England includes a reference to the effects of the decisions in relation to inequalities between the people of England with respect to their health and well-being;
- (b) a reference to effects of decisions in relation to the quality of services provided to individuals includes a reference to the effects of the decisions in relation to inequalities between individuals with respect to the benefits that they can obtain from those services.

(2C) In subsection (2A) “relevant bodies” means—

- (a) NHS England,
- (b) integrated care boards,
- (c) NHS trusts established under section 25, and
- (d) NHS foundation trusts.”

#### *NHS payment scheme*

### **77 The NHS payment scheme**

Schedule 10—

- (a) replaces the national tariff with the NHS payment scheme, and
- (b) makes provision relating to the NHS payment scheme.

#### *Patient choice and procurement*

### **78 Regulations as to patient choice**

- (1) The National Health Service Act 2006 is amended as follows.
- (2) In section 6E (standing rules)—
  - (a) in subsection (1)—
    - (i) for “may” substitute “must”;
    - (ii) for “or” substitute “and”;

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(b) after subsection (1) insert—

“(1A) The regulations must make provision as to the arrangements that NHS England and integrated care boards must make, in exercising their commissioning functions, 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.

(1B) The regulations may make other provision for the purpose of securing that, in exercising their commissioning functions, NHS England and integrated care boards protect and promote the rights of persons to make choices in relation to treatments or other services, where those rights—

- (a) arise by virtue of regulations under subsection (1A), or
- (b) are described in the NHS Constitution.”;

(c) omit subsection (2)(c).

(3) After section 6E insert—

**“6F Enforcement of section 6E regulations relating to patient choice**

(1) NHS England may investigate whether an integrated care board has failed or is likely to fail to comply with a requirement imposed by regulations under section 6E(1A) or (1B) (a “patient choice requirement”).

(2) NHS England may direct an integrated care board—

- (a) to put in place measures for the purpose of preventing failures to comply with patient choice requirements or mitigating the effect of such failures, or
- (b) where an investigation under subsection (1) has been carried out, to remedy a failure to comply with patient choice requirements.

(3) Where an investigation under subsection (1) is being or has been carried out, NHS England may accept from the integrated care board an undertaking that it will take any action falling within subsection (2)(a) or (b) that is specified in the undertaking, within a period that is so specified.

(4) Where NHS England accepts an undertaking under subsection (3), NHS England may not—

- (a) continue to carry out any ongoing investigation under subsection (1) so far as relating to matters to which the undertaking relates, or
- (b) give a direction under subsection (2) in relation to those matters, unless the integrated care board fails to comply with the undertaking.

(5) If an integrated care board from which NHS England has accepted an undertaking under subsection (3) complies partially with the undertaking, NHS England must take the partial compliance into account in deciding whether to do something mentioned in subsection (4)(a) or (b).

(6) Schedule 1ZA makes further provision about undertakings.

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*Status: This is the original version (as it was originally enacted).*

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### **6G Guidance relating to patient choice**

- (1) NHS England must publish guidance about how it intends to exercise powers conferred on it by section 6F and Schedule 1ZA.
- (2) Before publishing guidance under this section, NHS England must obtain the approval of the Secretary of State.”
- (4) In section 13U (annual report), in subsection (2)(c), for the words from “sections” to the end substitute “or by virtue of—  
section 6E(1A) and (1B);  
section 13E;  
section 13G;  
section 13I;  
section 13Q.”
- (5) Schedule 11 inserts into the National Health Service Act 2006 a new Schedule 1ZA (undertakings by integrated care boards).

## **79 Procurement regulations**

After section 12ZA of the National Health Service Act 2006 insert—

### *“Procurement*

#### **12ZB Procurement regulations**

- (1) Regulations may make provision in relation to the processes to be followed and objectives to be pursued by relevant authorities in the procurement of—
  - (a) health care services for the purposes of the health service in England, and
  - (b) other goods or services that are procured together with those health care services.
- (2) Regulations under subsection (1) must include provision specifying steps to be taken when following a competitive tendering process.
- (3) Regulations under subsection (1) must, in relation to the procurement of all health care services to which they apply, make provision for the purposes of—
  - (a) ensuring transparency;
  - (b) ensuring fairness;
  - (c) ensuring that compliance can be verified;
  - (d) managing conflicts of interest.
- (4) NHS England must publish such guidance as it considers appropriate about compliance with the regulations.
- (5) A relevant authority must have regard to guidance published under this section.
- (6) Before publishing guidance under this section, NHS England must obtain the approval of the Secretary of State.

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(7) In this section—

“health care service” has the same meaning as in Part 3 of the Health and Social Care Act 2012 (see section 150 of that Act);

“relevant authority” means—

- (a) a combined authority;
- (b) an integrated care board;
- (c) a local authority in England;
- (d) NHS England;
- (e) an NHS foundation trust;
- (f) an NHS trust established under section 25.”

## **80 Procurement and patient choice: consequential amendments etc**

(1) In the National Health Service Act 2006—

- (a) in section 12E (Secretary of State’s duty as respects variation in provision of health services), for subsection (2) substitute—

“(2) The functions mentioned in this subsection are the functions of the Secretary of State under—

- (a) section 6E;
- (b) section 12ZB;
- (c) section 13A.”;
- (b) in section 272 (orders, regulations, rules and directions), in subsection (6), after paragraph (zzd), insert—

“(zze) regulations under section 12ZB.”.

- (2) Omit sections 75 to 78 of, and Schedule 9 to, the Health and Social Care Act 2012 (regulations etc relating to procurement, patient choice and competition).
- (3) In section 40 of the Small Business, Enterprise and Employment Act 2015 (investigation of procurement functions), in subsection (7), omit paragraph (b) and the “or” before it.
- (4) The National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013 ([S.I. 2013/500](#)) are revoked.

## **81 Eradicating slavery and human trafficking in supply chains**

(1) The National Health Service Act 2006 is amended as follows.

(2) After section 12ZB (inserted by section 79) insert—

### **“12ZC Eradicating slavery and human trafficking in supply chains**

- (1) The Secretary of State must by regulations make such provision as the Secretary of State thinks appropriate with a view to eradicating the use in the health service in England of goods or services that are tainted by slavery and human trafficking.
- (2) The regulations may, in particular, include—



- (a) provision in connection with the processes to be followed by public bodies in the procurement of goods or services for the purposes of the health service in England (including provision as to circumstances in which a supplier is excluded from consideration for the award of a contract);
- (b) provision as to steps that must be taken by public bodies for assessing and addressing the risk of slavery and human trafficking taking place in relation to people involved in health service supply chains;
- (c) provision as to matters for which provision must be made in contracts for goods or services entered into by public bodies for the purposes of the health service in England.

(3) In this section—

“health service supply chains” means supply chains for providing goods or services for the purposes of the health service in England;

“public body” means a body exercising functions of a public nature;

“slavery and human trafficking” has the meaning given by section 54(12) of the Modern Slavery Act 2015;

“tainted”: goods or services are “tainted” by slavery and human trafficking if slavery and human trafficking takes place in relation to anyone involved in the supply chain for providing those goods or services.”

- (3) In section 272 (orders, regulations, rules and directions), in subsection (6), after paragraph (zze) (inserted by section 80), insert—
- “(zzf) regulations under section 12ZC,”.

### *Competition*

## 82 Duty to provide assistance to the CMA

- (1) After section 13SB of the National Health Service Act 2006 (inserted by section 34(2) of this Act) insert—

### **“13SC Provision of regulatory information or assistance to the CMA**

- (1) NHS England must give the Competition and Markets Authority (“the CMA”) —

- (a) any regulatory information that the CMA may require to enable the CMA to exercise its relevant functions,
- (b) any other regulatory information it considers would assist the CMA in exercising its relevant functions, and
- (c) any other assistance the CMA may require to assist the CMA in exercising its relevant functions.

(2) In this section—

“regulatory information” means information held by NHS England in connection with—

- (a) its regulatory functions falling within section 13SB(2)(a) or (b),
- or

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*Status: This is the original version (as it was originally enacted).*

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(b) its functions under—

- (i) sections 6F and Schedule 1ZA (patient choice: enforcement);
- (ii) sections 27A and 27C (NHS trusts: oversight and support and recommendations about restructuring);

“relevant functions”, in relation to the CMA, means its functions under the Competition Act 1998 and the Enterprise Act 2002 so far as those functions are exercisable on behalf of the CMA by the CMA Board or a CMA group (within the meaning of Schedule 4 to the Enterprise and Regulatory Reform Act 2013).”

- (2) In the Health and Social Care Act 2012, omit section 80 (co-operation between monitor and CMA).

### 83 Mergers of providers: removal of CMA powers

- (1) After section 72 of the National Health Service Act 2006 insert—

*“NHS trusts and foundation trusts: exemption from merger legislation*

#### **72A Exemption from Part 3 of the Enterprise Act 2002**

- (1) For the purposes of Part 3 of the Enterprise Act 2002 (mergers), a relevant merger situation is not to be treated as having been created where two or more relevant NHS enterprises cease to be distinct enterprises.
- (2) But subsection (1) does not apply to a case where two or more relevant NHS enterprises and one or more enterprises that are not relevant NHS enterprises cease to be distinct enterprises.
- (3) In this section “relevant NHS enterprise” means the activities, or part of the activities, of—
  - (a) an NHS trust established under section 25;
  - (b) an NHS foundation trust.”
- (2) Omit section 79 of the Health and Social Care Act 2012 (competition: mergers involving NHS foundation trusts).

### 84 Removal of functions relating to competition etc

- (1) Omit sections 72 and 73 of the Health and Social Care Act 2012 (Monitor and CMA: concurrent functions).
- (2) Schedule 12 contains consequential amendments.

### 85 Removal of CMA’s involvement in licensing etc

- (1) The Health and Social Care Act 2012 is amended as follows.
- (2) In section 95 (licensing: special conditions), in subsection (1)—
  - (a) in paragraph (a), omit “with the consent of the applicant.”;
  - (b) in paragraph (b), omit “with the consent of the licence holder.”.

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- (3) In section 100 (modification of standard conditions)—
  - (a) omit subsections (6) to (9);
  - (b) in subsection (11) omit “and section 101”.
- (4) Omit section 101 (modification references to the CMA).
- (5) In section 103 (standard condition as to transparency of certain criteria), in subsection (3)—
  - (a) in paragraph (a), for “the powers conferred on Monitor by sections 100, 101(7) and paragraph 7(2) of Schedule 10” substitute “the power conferred on NHS England by section 100”;
  - (b) omit paragraph (b) but not the “and” at the end.
- (6) In section 141 (levy on providers: consultation), in subsection (8), omit “and section 142”.
- (7) Omit section 142 (levy on providers: responses to consultation).
- (8) In section 304 (regulations, orders and directions), in subsection (5), omit paragraphs (d) and (j).
- (9) Omit Schedule 10 (references by Monitor to the CMA).

#### *Miscellaneous*

### **86 Special Health Authorities: removal of 3 year limit**

- (1) In the National Health Service Act 2006—
  - (a) omit section 28A (three year limit for special health authorities);
  - (b) in section 272(6), omit paragraph (zc).
- (2) In the NHS Counter Fraud (Establishment, Constitution, and Staff and Other Transfer Provisions) Order 2017 ([S.I. 2017/958](#))—
  - (a) in article 2, omit the definition of “the abolition date”;
  - (b) omit Part 4 (including Schedule 3) (abolition of the authority).
- (3) In consequence of subsection (1), in the Health and Social Care Act 2012, omit section 48.

### **87 Tidying up etc provisions about accounts of certain NHS bodies**

- (1) After section 29 of the National Health Service Act 2006 insert—

#### **“29A Special Health Authorities: accounts and audit**

- (1) In this section a reference to a Special Health Authority is to a Special Health Authority which—
  - (a) performs functions only or mainly in respect of England, or
  - (b) neither performs functions only or mainly in respect of England, nor performs functions only or mainly in respect of Wales.

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- (2) A Special Health Authority must keep proper accounts and proper records in relation to the accounts.
  - (3) The Secretary of State may give a Special Health Authority directions as to the form in which its accounts must be kept.
  - (4) A Special Health Authority must prepare, in respect of each financial year, annual accounts in such form as the Secretary of State may direct.
  - (5) A Special Health Authority must send copies of any annual accounts prepared by it under subsection (4)—
    - (a) to the Secretary of State, by such date as the Secretary of State may direct, and
    - (b) to the Comptroller and Auditor General, as soon as is reasonably practicable following the end of the financial year in question.
  - (6) The Comptroller and Auditor General must examine, certify and report on the annual accounts.
  - (7) The Special Health Authority must lay before Parliament—
    - (a) a copy of the annual accounts, and
    - (b) the Comptroller and Auditor General’s report on them.
  - (8) Nothing in subsection (2) requires any annual accounts prepared by a Special Health Authority to include matters relating to a charitable trust of which it is a trustee.
  - (9) Nothing in subsection (4) has effect in relation to accounts relating to a charitable trust of which the Special Health Authority is a trustee.”
- (2) In Schedule 4 to that Act (NHS trusts), after paragraph 11 insert—

*“Accounts and audit*

- 11A (1) An NHS trust must keep proper accounts and proper records in relation to the accounts.
- (2) The Secretary of State may give an NHS trust directions as to the form in which its accounts must be kept.
  - (3) An NHS trust must prepare, in respect of each financial year, annual accounts in such form as the Secretary of State may direct.
  - (4) For the audit of the annual accounts, see the Local Audit and Accountability Act 2014 (and, in particular, section 4 of that Act).
  - (5) The Comptroller and Auditor General may examine—
    - (a) the annual accounts and any records relating to them, and
    - (b) any report on them by the auditor or auditors.
  - (6) An NHS trust must send a copy of its audited annual accounts to NHS England by such date as NHS England may direct.
  - (7) Nothing in sub-paragraph (1) has effect in relation to accounts relating to a charitable trust of which an NHS trust is a trustee.

(8) Nothing in sub-paragraph (3) requires any accounts prepared by an NHS trust to include matters relating to a charitable trust of which it is a trustee.”

(3) In consequence of subsections (1) and (2)—

- (a) in section 6(3)(b) of the National Audit Act 1983, omit “Schedule 15 to the National Health Service Act 2006 or”;
- (b) in the National Health Service Act 2006, omit—
  - (i) section 232 and the italic heading before it;
  - (ii) section 277(3)(n);
  - (iii) Schedule 15;
- (c) in section 57(2A) of the Local Electoral Administration and Registration Services (Scotland) Act 2006, omit “(apart from in Schedule 15)”.

## 88 Meaning of “health” in NHS Act 2006

In section 275(1) of the National Health Service Act 2006 (interpretation), at the appropriate place insert—

““health” includes mental health;”.

## 89 Repeal of spent powers to make transfer schemes etc

(1) In the Health and Social Care Act 2012, omit—

- (a) sections 300 and 301;
- (b) section 308(3)(i);
- (c) Schedules 22 and 23.

(2) For section 302 of that Act substitute—

### “302 Transfer schemes in respect of previously transferred property

- (1) This section applies in relation to any property, rights or liabilities transferred under a property transfer scheme made under section 300(1) (before its repeal) from a Primary Care Trust, a Strategic Health Authority or the Secretary of State to a Special Health Authority or a qualifying company.
- (2) The Secretary of State may make a scheme for the transfer of any such property, rights or liabilities from the Special Health Authority or qualifying company to any of the following—
  - (a) a Minister of the Crown;
  - (b) NHS England;
  - (c) an integrated care board;
  - (d) an NHS trust;
  - (e) an NHS foundation trust;
  - (f) a qualifying company.
- (3) The things that may be transferred under a scheme under this section include—
  - (a) property, rights and liabilities that could not otherwise be transferred;

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- (b) property acquired, and rights and liabilities arising, after the making of the scheme;
  - (c) criminal liabilities, except where transfer is to a Minister of the Crown.
- (4) A transfer scheme under this section 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;
  - (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.
- (5) A transfer scheme under this section may make provision for the shared ownership or use of property.
- (6) A transfer scheme under this section 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.
- (7) In this section references to the transfer of property include references to the grant of a lease.
- (8) In this section “qualifying company” means—
- (a) 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 or NHS England, or
  - (b) a subsidiary of a company which is formed under that section and wholly owned by the Secretary of State.”
- (3) In Schedule 1 to the Public Records Act 1958 (bodies the records of which are public records), in Part 1 of the Table at the end of paragraph 3, omit “or section 300 of the Health and Social Care Act 2012”.

## **90 Abolition of Local Education and Training Boards**

- (1) The committees of Health Education England called Local Education and Training Boards are abolished.
- (2) In consequence, the Care Act 2014 is amended as follows.
- (3) In section 100 (objectives, priorities and outcomes), in subsection (4)—
  - (a) after paragraph (a), insert “and”;
  - (b) omit paragraph (c) and the “and” before it.
- (4) Omit sections 103 to 107 and the italic heading before them (local functions).

(5) In section 108 (tariffs), in subsection (9), omit “an LETB or”.

(6) In section 119 (interpretation and supplementary provision), in the table in subsection (1), omit the entries relating to the following—

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“appointment criteria”;

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“commissioner of health services”;

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“LETB”.

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(7) In Schedule 5 (Health Education England)—

- (a) in paragraph 9, in sub-paragraph (3), omit “(including a committee which HEE is required to appoint under section 103(1) (LETBs))”;
- (b) in paragraph 13—
  - (i) in sub-paragraph (2), omit “(but see sub-paragraph (5))”;
  - (ii) omit sub-paragraph (5);
- (c) in paragraph 26, in sub-paragraph (2)—
  - (i) omit paragraph (a);
  - (ii) in paragraph (b), omit “other”;
- (d) in paragraph 27, in sub-paragraph (2)—
  - (i) omit paragraph (a) and the “and” at the end;
  - (ii) in paragraph (b), omit “other”.

(8) Omit Schedule 6 (local education and training boards).

## **91 Hospital patients with care and support needs: repeals etc**

(1) In the Care Act 2014—

- (a) for section 74 substitute—

### **“74 Discharge of hospital patients with care and support needs**

- (1) Where a relevant trust is responsible for an adult hospital patient and considers that the patient is likely to require care and support following discharge from hospital, the relevant trust must, as soon as is feasible after it begins making any plans relating to the discharge, take any steps that it considers appropriate to involve—
  - (a) the patient, and
  - (b) any carer of the patient.
- (2) In performing the duty under subsection (1), a relevant trust must have regard to any guidance issued by NHS England.
- (3) For the purposes of this section, a relevant trust is responsible for a hospital patient if the relevant trust manages the hospital.
- (4) In this section—
  - “adult” means a person aged 18 or over;

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“carer” means an individual who provides or intends to provide care for an adult, otherwise than by virtue of a contract or as voluntary work;

“relevant trust” means—

- (a) an NHS trust established under section 25 of the National Health Service Act 2006, or
- (b) an NHS foundation trust.”;
- (b) omit Schedule 3 (assessment notices etc in relation to the discharge of hospital patients with care and support needs).

(2) The Community Care (Delayed Discharges etc) Act 2003 is repealed.

(3) In consequence of subsection (1)—

- (a) in section 14 of the Coronavirus Act 2020, omit subsection (8);
- (b) the Care and Support (Discharge of Hospital Patients) Regulations 2014 ([S.I. 2014/2823](#)) are revoked.

(4) In consequence of subsection (2)—

- (a) in Schedule 1 to the Local Authority Social Services Act 1970, omit the entry relating to the Community Care (Delayed Discharges etc) Act 2003;
- (b) in the Children Act 1989—
  - (i) in section 17ZA(6)(b), omit sub-paragraph (iii);
  - (ii) in section 17ZD(8)(b), omit sub-paragraph (iii);
- (c) in Schedule 2 to the [Social Services and Well-being \(Wales\) Act 2014 \(anaw 4\)](#), in Table 1—
  - (i) in the English language text, omit the entry relating to the Community Care (Delayed Discharges etc) Act 2003;
  - (ii) in the Welsh language text, omit the entry relating to Deddf Gofal Cymunedol (Rhyddhau Gohiriedig etc) 2003.

## PART 2

### HEALTH AND ADULT SOCIAL CARE: INFORMATION

#### 92 Information about payments etc to persons in the health care sector

- (1) The Secretary of State may by regulations require manufacturers or commercial suppliers of health care products, or connected persons, to—
  - (a) publish information about payments or other benefits provided by them to relevant persons, or
  - (b) provide such information to the Secretary of State.
- (2) The regulations may make further provision about when and how the information is to be published or provided.
- (3) The information may, in particular, include information about—
  - (a) a payment or other benefit,
  - (b) the person who provided it, or
  - (c) the person who received it.



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- (4) The regulations may make provision permitting or requiring the further sharing, publication or use of the information.
- (5) The regulations may impose requirements on manufacturers or commercial suppliers of health care products, or connected persons, about the retention of information relating to payments or other benefits provided by them to relevant persons.
- (6) The regulations may—
  - (a) authorise the Secretary of State to designate as a “relevant scheme” any scheme under which information about payments or other benefits to relevant persons is collected or published by a person other than the Secretary of State, if the Secretary of State considers that the provision of information under the scheme would render compliance with some or all of the requirements imposed by the regulations unnecessary;
  - (b) create exceptions from requirements to publish or provide information imposed by virtue of subsection (1) where information is provided under a relevant scheme;
  - (c) if such exceptions are created—
    - (i) require a person who holds information mentioned in subsection (1) in connection with the operation of a relevant scheme to provide the information to the Secretary of State;
    - (ii) permit or require the Secretary of State to publish the information.
- (7) The regulations may impose requirements on a person mentioned in subsection (6)(c) (i) about the retention of information mentioned there.
- (8) The provision for exceptions that may be made by the regulations includes provision authorising the Secretary of State to grant an exception from a requirement imposed by the regulations in a particular case, on grounds specified in the regulations.
- (9) The regulations may provide that the disclosure of information under the regulations does not breach—
  - (a) an obligation of confidence owed by the person making the disclosure, or
  - (b) any other restriction on the disclosure of the information (however imposed), other than a restriction imposed by the data protection legislation.
- (10) Provision made by the regulations may, in particular, be framed by reference to manufacturers or commercial suppliers with a specified connection to the United Kingdom or a part of it.
- (11) In this section—
  - (a) “connected person”, in relation to a manufacturer or commercial supplier, means a person who has a connection, of a description specified in regulations made by the Secretary of State, with the manufacturer or commercial supplier;
  - (b) “relevant person” means—
    - (i) a person who provides health care in the United Kingdom or a part of it, whether or not under arrangements made by another person, or
    - (ii) another person who carries on activities connected with health care provided in the United Kingdom or a part of it and is of a description specified in regulations made by the Secretary of State.
- (12) In this section—

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“commercial supplier”, in relation to a health care product, means a person who supplies the product otherwise than in the course of providing health care;

“data protection legislation” has the meaning given by section 3(9) of the Data Protection Act 2018;

“health care” means all forms of health care provided for individuals, whether relating to physical or mental health;

“health care product” means a medicine, medical device or other product which is supplied or prescribed in the course of the provision of health care;

“manufacturer”, in relation to a health care product, means a person who manufactures or assembles the product;

“payments or other benefits” includes any payment or other benefit—

- (a) wherever it is provided,
- (b) whether or not it is of a financial nature,
- (c) whether it is provided under a contract or otherwise, and
- (d) whether it is provided directly or through a third party.

### **93 Regulations under section 92: enforcement**

- (1) Regulations under section 92(1) may make provision for the enforcement of requirements imposed by the regulations, including provision conferring on the Secretary of State the power to impose a financial penalty on a person who, without reasonable excuse—
  - (a) fails to comply with such a requirement, or
  - (b) provides information in response to such a requirement that is false or misleading to a material extent.
- (2) The amount of the financial penalty is to be specified in, or determined in accordance with, the regulations.
- (3) Regulations by virtue of subsection (1) must include provision—
  - (a) requiring the Secretary of State, before imposing a financial penalty on a person, to give the person written notice (a “notice of intent”) of the proposed financial penalty;
  - (b) ensuring that the person is given an opportunity to make representations about the proposed financial penalty;
  - (c) requiring the Secretary of State, after the period for making representations, to decide whether to impose the financial penalty;
  - (d) requiring the Secretary of State, if the Secretary of State decides to impose the financial penalty, to give the person notice in writing (a “final notice”) imposing the penalty;
  - (e) enabling a person on whom a financial penalty is imposed to appeal to a court or tribunal in accordance with the regulations;
  - (f) as to the powers of the court or tribunal on such an appeal.
- (4) The provision that may be made by the regulations by virtue of subsection (1) includes provision—
  - (a) enabling a notice of intent or final notice to be withdrawn or amended;
  - (b) requiring the Secretary of State to withdraw a final notice in circumstances specified in the regulations;

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- (c) for a financial penalty to be increased by an amount specified in or determined in accordance with the regulations in the event of late payment;
- (d) as to how financial penalties are recoverable.

#### **94 Regulations under section 92: consent**

- (1) Before making regulations under section 92, the Secretary of State must—
  - (a) obtain the consent of the Scottish Ministers in relation to any provision which—
    - (i) would be within the legislative competence of the Scottish Parliament, if contained in an Act of that Parliament, and
    - (ii) is not merely incidental to, or consequential on, provision which would be outside that legislative competence;
  - (b) obtain the consent of the Welsh Ministers in relation to any provision which—
    - (i) would be within the legislative competence of Senedd Cymru, if contained in an Act of the Senedd, and
    - (ii) is not merely incidental to, or consequential on, provision which would be outside that legislative competence;
  - (c) obtain the consent of the Department of Health in Northern Ireland in relation to any provision which—
    - (i) would be within the legislative competence of the Northern Ireland Assembly, if contained in an Act of that Assembly, and
    - (ii) is not merely incidental to, or consequential on, provision which would be outside that legislative competence.
- (2) Consent is not required under subsection (1)(c) in relation to any provision if—
  - (a) a Bill for an Act of the Northern Ireland Assembly containing the provision would require the consent of the Secretary of State under section 8 of the Northern Ireland Act 1998, and
  - (b) the provision does not affect, other than incidentally, a transferred matter (within the meaning of that Act).

#### **95 Information standards**

- (1) The Health and Social Care Act 2012 is amended as follows.
- (2) In section 250 (information standards)—
  - (a) for subsection (2) substitute—
    - “(2) For the purposes of this Part “an information standard” is a standard in relation to the processing of information.
  - (2A) An information standard must specify to whom it applies.
  - (2B) An information standard may apply to one or more persons falling within the following paragraphs—
    - (a) the Secretary of State;
    - (b) NHS England;
    - (c) a public body which exercises functions in connection with the provision of health care or of adult social care in England;

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- (d) any person, other than a public body, who is required to be registered under Chapter 2 of Part 1 of the Health and Social Care Act 2008 in respect of the carrying on of a regulated activity (within the meaning of Part 1 of that Act).”;
  - (b) in subsection (3), for “services” substitute “care”;
  - (c) omit subsection (5);
  - (d) for subsection (6) substitute—
    - “(6) The Secretary of State must—
      - (a) have regard to any information standard published by NHS England that applies to the Secretary of State, and
      - (b) comply with any information standard published by the Secretary of State that applies to the Secretary of State.
    - (6A) Any other person to whom an information standard published under this section applies must comply with the information standard, except in so far as the requirement to comply is waived (see subsection (6B)).
    - (6B) Regulations may confer on a person who publishes an information standard the power to waive a person’s requirement to comply with the information standard (in whole or in part and generally or for a specific period).
    - (6C) The regulations may include provision—
      - (a) limiting the circumstances in which waivers may be granted;
      - (b) setting out the procedure to be followed in connection with waivers;
      - (c) requiring an information standard to include specified information about waivers.
    - (6D) For enforcement of information standards against persons other than public bodies, see section 277E.”;
  - (e) in subsection (7)—
    - (i) at the appropriate place insert—
      - ““health care” includes all forms of health care 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.”;
    - (ii) omit the definition of “health services”.
- (3) For section 251 substitute—

**“251 Information standards: procedure etc**

- (1) Regulations—
  - (a) must make provision about the procedure to be followed in connection with the preparation and publication of information standards under section 250;
  - (b) may require an information standard published under section 250 to be reviewed periodically in accordance with the regulations.

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- (2) Before laying a draft of regulations under subsection (1) before either House of Parliament, the Secretary of State must consult such persons as the Secretary of State considers appropriate.
- (3) For the purposes of section 250 the Secretary of State or NHS England may adopt an information standard prepared or published by another person.

#### **251ZA Information standards: compliance**

- (1) The Secretary of State may require a person to provide the Secretary of State with documents, records or other information for the purposes of monitoring the person's compliance with information standards published under section 250.
  - (2) A requirement under subsection (1) may specify—
    - (a) the form and manner in which information is to be provided, and
    - (b) when information is to be provided.
  - (3) A requirement under subsection (1) must be in writing.
  - (4) For enforcement of requirements under subsection (1) against persons other than public bodies, see section 277E.”
- (4) In section 251C (continuity of information: interpretation)—
- (a) after subsection (6) insert—

“(6A) “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).”;
  - (b) for subsection (7) substitute—

“(7) “Adult social care” and “public body” have the same meaning as in section 250; and “processes and “processed” are to be read in accordance with the meaning of “processing” in that section.”
- (5) In section 304 (regulations etc), in subsection (5), before paragraph (k) insert—
- “(ja) regulations under section 250(6B) or 251(1) (regulations about waiver of information standards and the procedure for setting standards);”.

## **96 Sharing anonymous health and social care information**

After section 251C of the Health and Social Care Act 2012 insert—

### **“CHAPTER 1B**

#### **SHARING OF ANONYMOUS INFORMATION**

#### **251D Sharing anonymous information**

- (1) A health or social care body may—

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- (a) require another health or social care body to provide information, other than personal information, that relates only to its activities in connection with the provision of health services or adult social care in England;
  - (b) require a private health or social care provider to provide information, other than personal information, that relates only to its activities in connection with the provision of health services, or adult social care in England, in pursuance of arrangements made with a public body.
- (2) A health or social care body may impose a requirement under subsection (1) only for purposes related to its functions in connection with the provision of health services or adult social care in England.
- (3) Regulations may create exceptions to subsection (1), which may be framed by reference to specified bodies or descriptions of bodies, descriptions of information or otherwise.
- (4) Subsection (1) does not require a person to process information so as to render it into a form in which it must be provided.
- (5) For enforcement of requirements under subsection (1)(b), see section 277E.
- (6) For the purposes of this section—
- “adult social care” has the meaning given by section 250(7);
  - “health services” has the meaning given by section 251C(6A);
  - “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;
  - “personal information” means information which is in a form that—
    - (a) identifies any individual, or
    - (b) enables the identity of any individual to be ascertained;
  - “private health or social care provider” means a person (other than a public body) who provides health services, or adult social care in England, pursuant to arrangements made with a health or social care body;
  - “public body” has the meaning given by section 250(7).”

## 97 **General duties of the Health and Social Care Information Centre etc**

- (1) The Health and Social Care Act 2012 is amended as follows.
- (2) In section 253(1) (general duties of the Information Centre)—
- (a) omit the “and” at the end of paragraph (ca);
  - (b) after paragraph (ca) insert—
    - “(cb) the need to promote the effective and efficient planning, development and provision of health services and of adult social care in England.”;
  - (c) at the end of paragraph (d) insert “, and
  - (e) the need to balance the needs mentioned in this subsection against one another, so far as they compete.”

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- (3) In section 261(1A) (other dissemination of information), for “the purposes of” substitute “purposes connected with”.

## **98 Collection of information from private health care providers**

In section 259 of the Health and Social Care Act 2012 (powers to require and request provision of information), in subsection (1)—

- (a) at the end of paragraph (a) omit “and”;
- (b) for paragraph (b) substitute—
  - “(aa) require any health care provider, not within paragraph (a), to provide the Centre with any information which the Centre considers it necessary or expedient to have for the purposes of complying with a direction of the Secretary of State under section 254, and
  - (b) request any person to provide the Centre with any information which the Centre considers it necessary or expedient to have for the purposes of any function it exercises by virtue of this Chapter.”;
- (c) in subsection (2), for “Those persons” substitute “The persons mentioned in this subsection”;
- (d) omit subsection (4);
- (e) in subsection (5), after “subsection (1)(a)” insert “or (aa)”;
- (f) omit subsection (7);
- (g) in subsection (9), after “subsection” insert “(1)(aa) or”;
- (h) after subsection (10) insert—

“(10A) For enforcement of requirements under subsection (1)(a) or (aa) against persons other than public bodies, see section 277E.

(10B) In this section “health care provider” means a person who is required to be registered under Chapter 2 of Part 1 of the Health and Social Care Act 2008 in respect of the carrying on of a regulated activity (within the meaning of Part 1 of that Act) involving or connected with the provision of health care.”

## **99 Collection of information about adult social care**

In Part 9 of the Health and Social Care Act 2012, after section 277 insert—

### **“CHAPTER 3**

#### **INFORMATION ABOUT ADULT SOCIAL CARE**

##### **277A Provision of adult social care information to Secretary of State**

- (1) The Secretary of State may require a relevant provider of adult social care services to provide the Secretary of State with information that relates to—
- (a) the person on whom the requirement is imposed,

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- (b) their activities in connection with the provision of adult social care in England, or
  - (c) any person to whom they have provided —
    - (i) adult social care in England, or
    - (ii) adult social care, outside England, in pursuance of arrangements made by an English local authority.
- (2) The Secretary of State may impose a requirement under subsection (1) only if the information is sought for purposes connected with the health care system, or adult social care system, in England.
- (3) A requirement under subsection (1) may specify—
- (a) the form and manner in which information is to be provided, and
  - (b) when information is to be provided.
- (4) A requirement under subsection (1) must be in writing.
- (5) The provision of information under this section—
- (a) does not breach any obligation of confidence owed by the person providing it, but
  - (b) is subject to any express restriction on disclosure imposed by any enactment (other than a restriction which allows disclosure if authorised by an enactment).
- (6) For enforcement of requirements under subsection (1), see section 277E.
- (7) In this section—
- “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
  - (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;
- “English local authority” means—
- (a) a county council in England;
  - (b) a district council for an area in England for which there is no county council;
  - (c) a London borough council;
  - (d) the Common Council of the City of London (in its capacity as a local authority);
- “relevant provider of adult social care services” means a person who is required to be registered under Chapter 2 of Part 1 of the Health and Social Care Act 2008 in respect of the carrying on of a regulated activity (within the meaning of Part 1 of that Act) involving or connected with the provision of adult social care.



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### **277B Restrictions on onward disclosure of information**

- (1) Information provided under section 277A may not be disclosed by the Secretary of State except for purposes connected with the health care system, or adult social care system, in England.
- (2) Commercially sensitive information provided under section 277A may not be disclosed by the Secretary of State (even for the purposes mentioned in subsection (1)) unless the Secretary of State considers that the disclosure is appropriate, having taken into account the public interest as well as the interests of the person to whom the commercially sensitive information relates.
- (3) Subsections (1) and (2) do not restrict the disclosure of information where—
  - (a) the person to whom the information relates has consented to the disclosure,
  - (b) the information has previously been lawfully disclosed to the public,
  - (c) the disclosure is in accordance with any 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 conferred under or by virtue of any provision of this or any other Act,
  - (f) the disclosure is in connection with the investigation of a criminal offence (whether or not in the United Kingdom), or
  - (g) the disclosure is for the purpose of criminal proceedings (whether or not in the United Kingdom).
- (4) In this section “commercially sensitive information” means commercial information whose disclosure the Secretary of State thinks might significantly harm the legitimate business interests of the person to whom it relates.

### **277C Directions to certain bodies to exercise functions under this Chapter**

- (1) The Secretary of State may direct the Health and Social Care Information Centre to exercise the functions of the Secretary of State under section 277A (and where a direction is given, section 277B applies accordingly).
- (2) The Secretary of State may direct a Special Health Authority performing functions only or mainly in respect of England to exercise the functions of the Secretary of State under section 277A (and where a direction is given, section 277B applies accordingly).
- (3) The Secretary of State may give directions to a body about the exercise of any functions that it is directed to exercise under subsection (1) or (2) (including directions as to the processing of information that the body obtains in exercising those functions).

### **277D Arrangements with third parties**

- (1) The Secretary of State may make arrangements for any person prescribed by regulations under this subsection to exercise the functions of the Secretary of

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State under section 277A (and where arrangements are made, section 277B applies accordingly).

- (2) Arrangements under subsection (1) may—
  - (a) provide for the Secretary of State to make payments to the person;
  - (b) make provision as to the circumstances in which any such payments are to be repaid to the Secretary of State.
- (3) Section 304(9) (differential provision) applies in relation to the power to make arrangements under subsection (1) as it applies to a power of the Secretary of State to give directions under this Act.”

## **100 Enforcement of duties against private providers**

- (1) The Health and Social Care Act 2012 is amended as follows.
- (2) After section 277D (inserted by section 99 of this Act) insert—

### **“CHAPTER 4**

#### **ENFORCEMENT**

#### **277E Enforcement of provisions under this Part**

- (1) Regulations may make provision conferring on the Secretary of State the power to impose a financial penalty on a person, other than a public body, who without reasonable excuse—
  - (a) fails to comply with an information standard (unless the requirement for the person to comply has been waived by virtue of regulations under section 250(6B));
  - (b) fails to comply with a requirement to provide information imposed under section 251ZA(1), 251D(1)(b), 259(1)(a) or (aa) or 277A(1);
  - (c) provides information in response to such a requirement that is false or misleading to a material extent.
- (2) The amount of the financial penalty is to be specified in, or determined in accordance with, the regulations.
- (3) The regulations must include provision—
  - (a) requiring the Secretary of State, before imposing a financial penalty on a person, to give the person written notice (a “notice of intent”) of the proposed financial penalty;
  - (b) ensuring that the person is given an opportunity to make representations about the proposed financial penalty;
  - (c) requiring the Secretary of State, after the period for making representations, to decide whether to impose the financial penalty;
  - (d) requiring the Secretary of State, if the Secretary of State decides to impose the financial penalty, to give the person notice in writing (a “final notice”) imposing the penalty;
  - (e) enabling a person on whom a financial penalty is imposed to appeal to the First-tier Tribunal in accordance with the regulations;

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- (f) as to the powers of the Tribunal on such an appeal.
- (4) The provision that may be made by the regulations includes provision—
  - (a) enabling a notice of intent or final notice to be withdrawn or amended;
  - (b) requiring the Secretary of State to withdraw a final notice in circumstances specified in the regulations;
  - (c) for a financial penalty to be increased by an amount specified in or determined in accordance with the regulations in the event of late payment;
  - (d) for the recovery of financial penalties in the county court.
- (5) In this section “public body” has the meaning given by section 250(7).

#### **277F Directions to Special Health Authority to exercise functions under section 277E**

The Secretary of State may—

- (a) direct a Special Health Authority performing functions only or mainly in respect of England to exercise the functions of the Secretary of State under regulations made under section 277E;
  - (b) give the Special Health Authority directions about the exercise of those functions (including directions as to the processing of information that the body obtains in exercising those functions).”
- (3) In section 304 (regulations etc), in subsection (5), after paragraph (ja) (inserted by section 95 of this Act) insert—
- “(jb) regulations under section 277E (regulations about enforcement);”.

### **101 Medicine information systems**

- (1) The Medicines and Medical Devices Act 2021 is amended in accordance with subsections (2) to (9).
- (2) In Part 2, for the heading of Chapter 1 substitute “Regulations: general”.
- (3) After that Chapter insert—

## **“CHAPTER 1A**

### **REGULATIONS: INFORMATION SYSTEMS**

#### **7A Information systems**

- (1) The appropriate authority may by regulations make provision about the establishment and operation by the Health and Social Care Information Centre (“the Information Centre”) of one or more information systems for purposes relating to—
  - (a) the safety of human medicines, including the safety of clinical decisions relating to human medicines;
  - (b) the quality and efficacy of human medicines.
- (2) The regulations may (among other things) make provision—

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- (a) about the information in relation to human medicines which may or must be entered or retained in an information system established under subsection (1);
  - (b) requiring information to be provided to the Information Centre for the purposes of its functions under the regulations;
  - (c) about the use or disclosure of information contained in an information system established under subsection (1);
  - (d) requiring the Information Centre to have regard to specified matters in exercising its functions under the regulations.
- (3) The provision mentioned in subsection (2)(a) and (b) may relate to—
- (a) information for specified purposes,
  - (b) information that the Information Centre considers it necessary or expedient to have for the purposes of its functions under the regulations,
  - (c) information (including information relating to individuals) which is of a specified description, or
  - (d) information (including information relating to individuals) which is of a description set out in a direction in writing given by the appropriate authority.
- (4) The provision mentioned in subsection (2)(b) may include provision—
- (a) requiring, or enabling the Information Centre to require, specified persons or descriptions of persons to whom subsection (5) applies to provide information to the Information Centre;
  - (b) about the manner in which, and the time at which, those persons must provide information, or for those matters to be determined by the Information Centre;
  - (c) about any procedural steps the Information Centre must follow in requiring a person to provide information to it;
  - (d) requiring specified persons or descriptions of persons to whom subsection (5) applies to record or retain information which they are, or may be, required to provide to the Information Centre under the regulations;
  - (e) in relation to the enforcement of any requirement imposed by or under the regulations.
- (5) This subsection applies to any person who provides services, or exercises any powers or duties, relating to—
- (a) human medicines,
  - (b) health, or
  - (c) education.
- (6) The provision mentioned in subsection (2)(c) may include provision about—
- (a) the analysis by the Information Centre of information that is contained in an information system (whether alone or in combination with other information) for the purposes mentioned in subsection (1) or for other purposes;
  - (b) the publication by the Information Centre of information that is contained in an information system or has been analysed in combination with such information;

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- (c) the disclosure (other than by way of publication) of information mentioned in paragraph (b) to specified persons or descriptions of persons, or for specified purposes;
  - (d) the use or further disclosure by any person of information disclosed to them under the regulations.
- (7) Regulations conferring on the appropriate authority a power to give a direction by virtue of subsection (3)(d) must—
  - (a) provide that the power includes power to vary or revoke the directions by a subsequent direction, and
  - (b) in the case of a power exercisable in relation to Wales or Scotland, require the Secretary of State—
    - (i) where a proposed direction relates to Wales, to consult the Welsh Ministers before giving it, and
    - (ii) where a proposed direction relates to Scotland, to consult the Scottish Ministers before giving it.
- (8) Where regulations under subsection (1) include provision by virtue of subsection (4)(a) which requires, or enables the Information Centre to require, the provision of individual health information held for the purposes of the health service established under section 1 of the National Health Service (Scotland) Act 1978, the regulations must provide for the information to be collected by the Scottish Ministers, or a person designated by them, on behalf of the Information Centre, subject to specified exceptions.
- (9) Regulations by virtue of subsection (8) may—
  - (a) confer powers or duties (including discretions) on the Scottish Ministers, a designated person or the Information Centre;
  - (b) provide for powers or duties conferred on the Scottish Ministers to be treated for the purposes of section 2 of the National Health Service (Scotland) Act 1978 as functions relating to the health service (within the meaning of that Act).
- (10) Where regulations under subsection (1) include provision by virtue of subsection (4)(a) which requires, or enables the Information Centre to require, the provision of individual health information held for the purposes of the health service in Wales, the regulations must provide for the information to be collected by the Welsh Ministers, or a person designated by them, on behalf of the Information Centre, subject to specified exceptions.
- (11) Regulations by virtue of subsection (10) may confer powers or duties (including discretions) on the Welsh Ministers, a designated person or the Information Centre.
- (12) Regulations under subsection (1) may provide that the disclosure of information by virtue of this section does not breach—
  - (a) an obligation of confidence owed by the person making the disclosure, or
  - (b) any other restriction on the disclosure of the information (however imposed), other than a restriction imposed by the data protection legislation.
- (13) In this section—

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“data protection legislation” has the meaning given by section 3(9) of the Data Protection Act 2018;

“health service”, in relation to Wales, has the meaning given by section 206(1) of the National Health Service (Wales) Act 2006;

“human medicine” has the same meaning as in Part 2 (see section 9);

“individual health information” means information (however recorded) which relates to—

- (a) the physical or mental health or condition of an individual,
- (b) the diagnosis of an individual’s condition, or
- (c) an individual’s care or treatment,

or is (to any extent) derived directly or indirectly from information relating to any of those matters;

“specified” means specified in regulations under subsection (1).

### **7B Offence of disclosing information**

(1) A person to whom information is disclosed under regulations under section 7A(1) commits an offence if the person uses or discloses that information in contravention of the regulations.

(2) A person guilty of an offence under this section is liable—

- (a) on summary conviction in England and Wales, to imprisonment for a term not exceeding 51 weeks, to a fine or to both;
- (b) on summary conviction in Scotland or Northern Ireland, to imprisonment for a term not exceeding 6 months, to a fine not exceeding level 5 on the standard scale or to both.

(3) In relation to an offence committed before the coming into force of section 281(5) of the Criminal Justice Act 2003, the reference in subsection (2) (a) to 51 weeks is to be read as a reference to 6 months.”

(4) In section 19 (medical devices: information systems)—

(a) in subsection (6)—

- (i) in paragraph (b) for “contained in an information system” substitute “that is contained in an information system or has been analysed in combination with such information”;
- (ii) in paragraph (c) for “contained in an information system” substitute “mentioned in paragraph (b)”;

(b) after subsection (7) insert—

“(7A) Regulations under this section may provide that the disclosure of information by virtue of this section does not breach—

- (a) an obligation of confidence owed by the person making the disclosure, or
- (b) any other restriction on the disclosure of the information (however imposed), other than a restriction imposed by the data protection legislation.”

(5) In section 43 (power to make consequential etc provision)—

(a) in subsection (1), for “This section” substitute “Subsection (2)”;

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- (b) after subsection (2) insert—
- “(3) Provision made by regulations under section 7A or 19 by virtue of subsection (2)(a) may include provision—
- (a) changing the territorial extent of provisions of Chapter 2 of Part 9 of the Health and Social Care Act 2012 (constitution and functions etc of the Health and Social Care Information Centre), or
  - (b) otherwise amending that Chapter.”
- (6) In section 44 (scope of powers of Northern Ireland departments) after “2(1)” insert “, 7A(1)”.
- (7) In section 45 (consultation)—
- (a) after subsection (1) insert—
- “(1A) In relation to proposed regulations under section 7A(1), the Secretary of State must—
- (a) where the regulations relate to Wales, specifically consult the Welsh Ministers, and
  - (b) where the regulations relate to Scotland, specifically consult the Scottish Ministers.”;
- (b) in subsection (6), for paragraph (a) (but not the “and” at the end) substitute—
- “(a) in relation to regulations made under section 2(1) or 7A(1), the appropriate authority within the meaning given by section 2(6),
  - (aa) in relation to regulations made under section 10(1), the appropriate authority within the meaning given by section 10(6),”.
- (8) In section 46 (reporting requirements)—
- (a) in subsections (1), (3)(b) and (4)(a), after “2(1),” insert “7A(1),”;
  - (b) in subsection (5), in paragraphs (a) and (b) of the definition of “relevant authority”, after “2(1)” insert “, 7A(1)”.
- (9) In section 47 (procedure for regulations), in subsection (2), after “2(1)” insert “, 7A(1)”.
- (10) In section 253 of the Health and Social Care Act 2012 (general duties of Information Centre), after subsection (2) insert—
- “(2A) Subsections (1) and (2) do not apply in relation to the functions of the Information Centre by virtue of the Medicines and Medical Devices Act 2021.”

### PART 3

#### SECRETARY OF STATE'S POWERS TO TRANSFER OR DELEGATE FUNCTIONS

#### 102 Relevant bodies and Special Health Authorities

In this Part—

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“relevant body” means—

- (a) Health Education England,
- (b) the Health and Social Care Information Centre,
- (c) the Health Research Authority,
- (d) the Human Fertilisation and Embryology Authority,
- (e) the Human Tissue Authority, or
- (f) NHS England;

“Special Health Authority” means a Special Health Authority established under section 28 of the National Health Service Act 2006.

### **103 Power to transfer functions between bodies**

- (1) The Secretary of State may by regulations transfer a function of a relevant body to another relevant body.
- (2) Regulations under this section may be made only if the Secretary of State considers that they serve the purpose of improving the exercise of public functions, having regard to—
  - (a) efficiency,
  - (b) effectiveness,
  - (c) economy, and
  - (d) securing appropriate accountability to Ministers.
- (3) Regulations under this section may not transfer a function of NHS England if the Secretary of State considers that to do so would make NHS England redundant.
- (4) The provision which may be made by regulations under this section by virtue of section 183(1)(a) includes provision—
  - (a) modifying functions of either relevant body (see further section 105(1));
  - (b) modifying the constitutional or funding arrangements of either relevant body (see further section 105(2) and (3));
  - (c) abolishing the relevant body from which functions are transferred, where the Secretary of State considers that it is redundant as a result of the transfer of functions.
- (5) Where—
  - (a) regulations under this section contain provision for a body to exercise a function that is exercisable in relation to Scotland, Wales or Northern Ireland,
  - (b) immediately before that provision takes effect, the function is exercisable by another body whose constitutional arrangements contain provision (however expressed) for the body to include a member whose experience, functions or appointment are connected with that part of the United Kingdom, and
  - (c) the Secretary of State considers that the constitutional arrangements of the body referred to in paragraph (a) do not contain corresponding provision as to membership,

the Secretary of State must make provision by virtue of section 183(1)(a) modifying the constitutional arrangements of the body referred to in paragraph (a) so that they contain corresponding provision as to membership.
- (6) In this section, “Minister” means a Minister of the Crown (as defined by section 8 of the Ministers of the Crown Act 1975).



#### **104 Power to provide for exercise of functions of Secretary of State**

- (1) The Secretary of State may by regulations provide for a relevant body to exercise specified functions of the Secretary of State on behalf of the Secretary of State.
- (2) The functions that may be specified are —
  - (a) any functions of the Secretary of State which relate to the health service in England;
  - (b) any other functions that the Secretary of State may provide for a Special Health Authority to exercise.
- (3) The provision which may be made by regulations under this section by virtue of section 183(1)(a) includes provision—
  - (a) modifying functions of the relevant body (see further section 105(1));
  - (b) modifying the constitutional or funding arrangements of the relevant body (see further section 105(2) and (3)).
- (4) Where—
  - (a) regulations under this section contain provision for a relevant body to exercise a function of the Secretary of State that is exercisable in relation to Scotland, Wales or Northern Ireland,
  - (b) immediately before that provision takes effect, the Secretary of State's function is exercisable by a body whose constitutional arrangements contain provision (however expressed) for the body to include a member whose experience, functions or appointment are connected with that part of the United Kingdom, and
  - (c) the Secretary of State considers that the relevant body's constitutional arrangements do not contain corresponding provision as to membership,  
the Secretary of State must make provision by virtue of section 183(1)(a) modifying the relevant body's constitutional arrangements so that they contain corresponding provision as to membership.
- (5) Regulations under this section may make provision for determining whether and in what circumstances the Secretary of State or a relevant body is liable for the exercise of the specified functions by the relevant body.
- (6) The specification of a function in regulations under this section does not preclude the Secretary of State from exercising the function.
- (7) In this section “the health service” has the same meaning as in the National Health Service Act 2006 (see section 275(1) of that Act).

#### **105 Scope of powers**

- (1) In sections 103 and 104, references to modifying the functions of a body include—
  - (a) conferring a function on the body;
  - (b) abolishing a function of the body;
  - (c) changing the purpose or objective for which the body exercises a function;
  - (d) changing the conditions under which the body exercises a function.
- (2) In sections 103 and 104, references to the constitutional arrangements of a body include matters relating to—
  - (a) the name of the body;

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- (b) the chair of the body (including qualifications and procedures for appointment and functions);
  - (c) members of the body (including the number of members, qualifications and procedures for appointment and functions);
  - (d) staff of the body exercising functions on its behalf (including qualifications and procedures for appointment and functions);
  - (e) the body's powers to employ staff;
  - (f) governing procedures and arrangements (including the role and membership of committees and sub-committees);
  - (g) reports and accounts.
- (3) In sections 103 and 104, references to modifying the funding arrangements of a body include—
- (a) modifying the extent to which it is funded by a Minister;
  - (b) conferring power on the body to charge fees for the exercise of a function (and to determine their amount).
- (4) Regulations under section 103 or 104 may repeal and re-enact (but may not create)—
- (a) a power to make subordinate legislation,
  - (b) a power of forcible entry, search or seizure,
  - (c) a power to compel the giving of evidence, or
  - (d) a criminal offence.
- (5) The provision which may be made by regulations under section 103 or 104 may be made by repealing, revoking or amending provision made by or under an Act, whenever passed or made.
- (6) The provision which may be made by regulations under section 103 or 104 by virtue of section 183(1)(a) includes provision repealing, revoking or amending provision made by or under any of the following, whenever passed or made—
- (a) an Act;
  - (b) an Act of the Scottish Parliament;
  - (c) a Measure or Act of Senedd Cymru;
  - (d) Northern Ireland legislation.
- (7) In this section, “Minister” means a Minister of the Crown (as defined by section 8 of the Ministers of the Crown Act 1975).

## **106 Transfer schemes in connection with regulations**

- (1) The Secretary of State may, in connection with regulations under section 103 or 104, make one or more schemes for the transfer of property, rights and liabilities (“transfer schemes”).
- (2) A transfer scheme in connection with regulations under section 103 may provide for the transfer of property, rights or liabilities to any appropriate person from the relevant body from which functions are transferred by the regulations.
- (3) A transfer scheme in connection with regulations under section 104 may provide for the transfer of property, rights or liabilities to any appropriate person from—
- (a) the Secretary of State,
  - (b) a Special Health Authority, or

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- (c) any relevant body ceasing to exercise functions of the Secretary of State as a result of the regulations.
- (4) The things that may be transferred under a transfer scheme include—
- (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.
- (5) A transfer scheme may—
- (a) create rights, or impose liabilities, in relation to property or rights transferred;
  - (b) make provision about the continuing effect of things done by, on behalf of or in relation to 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;
  - (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;
  - (e) make provision for the shared ownership or use of property;
  - (f) make provision which is the same as or similar to the TUPE regulations;
  - (g) make other consequential, supplementary, incidental or transitional provision.
- (6) A transfer scheme may provide—
- (a) for modifications by agreement;
  - (b) for modifications to have effect from the date when the original scheme came into effect.
- (7) In subsection (5)(f), “the TUPE regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246).
- (8) For the purposes of this section—
- (a) references to rights and liabilities include rights and liabilities relating to a contract of employment;
  - (b) references to the transfer of property include the grant of a lease.
- (9) For the purposes of subsection (8)(a)—
- (a) an individual who holds employment in the civil service of the State 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 of the State are to be treated as constituting the terms of the contract of employment.
- (10) In this section “appropriate person” means—
- (a) any relevant body,
  - (b) the Secretary of State,
  - (c) an integrated care board,
  - (d) a Special Health Authority, or
  - (e) an NHS trust established under section 25 of the National Health Service Act 2006.

## **107 Transfer schemes: taxation**

- (1) The Treasury may by regulations make provision varying the way in which a relevant tax has effect in relation to—
  - (a) anything transferred under a scheme under section 106, or
  - (b) anything done for the purposes of, or in relation to, a transfer under such a scheme.
- (2) The provision which may be made under subsection (1)(a) includes in particular provision for—
  - (a) a tax provision not to apply, or to apply with modifications, in relation to anything transferred;
  - (b) anything transferred to be treated in a specified way for the purposes of a tax provision;
  - (c) the Secretary of State to be required or permitted to determine, or specify the method for determining, anything which needs to be determined for the purposes of any tax provision so far as relating to anything transferred.
- (3) The provision which may be made under subsection (1)(b) includes in particular provision for—
  - (a) a tax provision not to apply, or to apply with modifications, in relation to anything done for the purposes of or in relation to the transfer;
  - (b) anything done for the purposes of, or in relation to, the transfer to have or not have a specified consequence or be treated in a specified way;
  - (c) the Secretary of State to be required or permitted to determine, or specify the method for determining, anything which needs to be determined for the purposes of any tax provision so far as relating to anything done for the purposes of, or in relation to, the transfer.
- (4) Regulations under this section are subject to annulment in pursuance of a resolution of the House of Commons.
- (5) In this section references to the transfer of property include the grant of a lease.
- (6) In this section—
 

“relevant tax” means income tax, corporation tax, capital gains tax, value added tax, stamp duty or stamp duty reserve tax;

“tax provision” means a provision of an enactment about a relevant tax.

## **108 Consent and consultation**

- (1) Before making regulations under section 103 or 104, the Secretary of State must—
  - (a) obtain the consent of the Scottish Ministers in relation to any provision—
    - (i) which would be within the legislative competence of the Scottish Parliament, if contained in an Act of that Parliament, and is not merely incidental to, or consequential on, provision which would be outside that legislative competence, or
    - (ii) which modifies the functions of the Scottish Ministers;
  - (b) obtain the consent of the Welsh Ministers in relation to any provision—
    - (i) which would be within the legislative competence of Senedd Cymru, if contained in an Act of the Senedd, and is not merely incidental to,

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- or consequential on, provision which would be outside that legislative competence, or
- (ii) which modifies the functions of the Welsh Ministers;
- (c) obtain the consent of a Northern Ireland department in relation to any provision—
- (i) which would be within the legislative competence of the Northern Ireland Assembly, if contained in an Act of that Assembly, and is not merely incidental to, or consequential on, provision which would be outside that legislative competence, or
- (ii) which modifies the functions of a Northern Ireland department.
- (2) Consent is not required under subsection (1)(c)(i) in relation to any provision if—
- (a) a Bill for an Act of the Northern Ireland Assembly containing the provision would require the consent of the Secretary of State under section 8 of the Northern Ireland Act 1998, and
- (b) the provision does not affect, other than incidentally, a transferred matter (within the meaning of that Act).
- (3) Before making regulations under section 103 or 104, the Secretary of State must consult the following about a draft of the regulations—
- (a) any body to which the regulations relate, and
- (b) such other persons as the Secretary of State considers appropriate.
- (4) If, as a result of consultation under this section, it appears to the Secretary of State appropriate to change the draft regulations, the Secretary of State must carry out such further consultation with respect to the changes as the Secretary of State considers appropriate.
- (5) It is immaterial for the purposes of this section whether consent is obtained or consultation is carried out before or after the commencement of this section.

## PART 4

### THE HEALTH SERVICES SAFETY INVESTIGATIONS BODY

#### *Introductory*

#### **109 Establishment of the HSSIB**

- (1) A body corporate called the Health Services Safety Investigations Body is established.
- (2) In this Part that body is referred to as “the HSSIB”.
- (3) Schedule 13 contains further provision about the HSSIB.

#### *Investigations*

#### **110 Investigation of incidents with safety implications**

- (1) The HSSIB has the function of investigating incidents that—
- (a) occur in England during the provision of health care services, and

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- (b) have or may have implications for the safety of patients.
- (2) The purpose of the investigations is to—
  - (a) identify risks to the safety of patients, and
  - (b) address those risks by facilitating the improvement of systems and practices in the provision of NHS services or other health care services in England.
- (3) In particular, where an investigation relates to an incident that did not occur during the provision of NHS services, the HSSIB must consider whether, in relation to any risks identified, the systems and practices in the provision of NHS services could be improved.
- (4) The purpose of the investigations does not include assessing or determining—
  - (a) blame,
  - (b) civil or criminal liability, or
  - (c) whether action needs to be taken in respect of an individual by a regulatory body.
- (5) In this Part, an incident within subsection (1) is called a “qualifying incident”.

## **111 Deciding which incidents to investigate**

- (1) The HSSIB’s function under section 110 includes determining which qualifying incidents it will investigate, subject to subsection (2).
- (2) The Secretary of State may direct the HSSIB to carry out an investigation of—
  - (a) a particular qualifying incident that has occurred, or
  - (b) qualifying incidents that have occurred and are of a particular description.
- (3) A direction under subsection (2) may specify the date by which the HSSIB must publish its final report (see section 113).
- (4) A direction under subsection (2)—
  - (a) must be in writing;
  - (b) may be varied or revoked by subsequent directions;
  - (c) may provide for a person to exercise a discretion in dealing with any matter.
- (5) Once the HSSIB has begun an investigation into a qualifying incident, it must, in such manner as it thinks appropriate, publish a statement which—
  - (a) reports that it has begun the investigation,
  - (b) contains a brief description of the incident, and
  - (c) sets out, in general terms, the issues that the HSSIB expects to consider in the investigation.
- (6) The HSSIB may give advance notice of a statement under subsection (5) to any person the HSSIB considers may be affected by the investigation.
- (7) Where the HSSIB discontinues an investigation, it must, in such manner as it thinks appropriate, publish a statement which—
  - (a) reports that it has discontinued the investigation, and
  - (b) gives its reasons for doing so.

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- (8) Where the HSSIB determines not to investigate a qualifying incident, it may give notice of its determination to any person the HSSIB considers to have an interest in the determination.
- (9) Notice under subsection (8) may include—
  - (a) a brief description of the incident, and
  - (b) the HSSIB’s reasons for not investigating it.

## **112 Criteria, principles and processes**

- (1) The HSSIB must determine and publish—
  - (a) the criteria it will use in determining which incidents it investigates,
  - (b) the principles which are to govern investigations,
  - (c) the processes to be followed in carrying out investigations, and
  - (d) the processes for ensuring that, so far as reasonable and practicable, patients and their families are involved in investigations.
- (2) The processes determined under subsection (1)(c) must include—
  - (a) the procedures and methods to be used in investigations (including in the interviewing of persons), and
  - (b) the time periods within which the HSSIB aims to complete investigations.
- (3) Different processes under subsection (1)(c) or (d) may be determined for different descriptions of investigation.
- (4) Anything published under subsection (1)(d) must be—
  - (a) easily accessible to patients and their families, and
  - (b) capable of being easily understood by them.
- (5) The HSSIB must review the criteria, principles and processes—
  - (a) within the period of three years beginning with their publication under subsection (1), and
  - (b) subsequently within each period of five years beginning with the completion of the previous review.
- (6) If the HSSIB revises the criteria, principles and processes it must publish them as revised.
- (7) In determining or revising the criteria, principles and processes the HSSIB must consult—
  - (a) the Secretary of State, and
  - (b) any other persons the HSSIB considers appropriate.

### *Reports*

## **113 Final reports**

- (1) When the HSSIB completes an investigation, it must publish a report on the outcome of the investigation (the “final report”).
- (2) The final report must—

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- (a) contain a statement of findings of fact made as a result of the investigation and an analysis of those findings,
  - (b) make such recommendations as to the action to be taken by any person as the HSSIB considers appropriate, and
  - (c) set out the HSSIB’s conclusions on the matters it considered in accordance with section 110(3) (but only if that provision is applicable to the investigation).
- (3) The final report must focus on ascertaining risks to the safety of patients and any recommendations as to the action to be taken by any person must focus on addressing those risks (rather than on the activities of individuals involved in the incident).
- (4) In particular, the final report may not include an assessment or determination of—
- (a) blame,
  - (b) civil or criminal liability, or
  - (c) whether action needs to be taken in respect of an individual by a regulatory body.
- (5) Information which is protected material (see section 122(2)) may be disclosed in a final report if the HSSIB determines that the benefits to the safety of patients served by the disclosure outweigh—
- (a) any adverse impact on current or future investigations by deterring persons from providing information to the HSSIB, and
  - (b) any adverse impact on securing the improvement of the safety of health care services provided to patients in England.
- (6) The final report may not, without their consent, include the name of any individual—
- (a) who has provided information to the HSSIB for the purposes of the investigation, or
  - (b) who was involved in the incident being investigated.
- (7) Where an investigation is carried out pursuant to a direction under section 111, the HSSIB must send a copy of the final report to the Secretary of State.

#### **114 Interim reports**

- (1) While the HSSIB is carrying out an investigation, it may publish a report on any matter relating to the investigation (an “interim report”).
- (2) An interim report may—
- (a) contain a statement of findings of fact made as a result of the investigation to date and an analysis of those findings,
  - (b) make such recommendations as to the action to be taken by any person as the HSSIB considers appropriate, and
  - (c) set out the HSSIB’s conclusions to date on the matters it has considered in accordance with section 110(3).
- (3) Subsections (3) to (7) of section 113 apply in relation to an interim report as they apply in relation to a final report.

#### **115 Draft reports**

- (1) Before it publishes a final or interim report, the HSSIB—



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- (a) must send a draft of the report to any person who the HSSIB reasonably believes could be adversely affected by the report, and
  - (b) may send a draft of the report to any other person who the HSSIB believes should be sent a draft.
- (2) If a person who the HSSIB reasonably believes could have been adversely affected by the report has died, the draft report must be sent to the person (if any) who appears to the HSSIB to best represent the interests of the person who has died.
- (3) The HSSIB must notify every person to whom a draft report is sent that the person has an opportunity to comment on the draft report before the deadline specified by the HSSIB.
- (4) If a person's comments on a draft report are not taken into account in the final or interim report as published, the HSSIB must explain to the person why that is.

## **116 Response to reports**

- (1) This section applies where a final or interim report includes recommendations as to the action to be taken by any person.
- (2) The HSSIB must, in such manner as it thinks appropriate, send the report to that person or make it available to them.
- (3) The report must specify the deadline for that person to provide a written response.
- (4) Before that deadline, the person must respond to the HSSIB in writing setting out the actions they propose to take in pursuance of the recommendations.
- (5) The HSSIB may publish the response.
- (6) Subsection (4) does not require a person to do anything that they could be required to do by an Act of Senedd Cymru made without the consent of a Minister of the Crown.

## **117 Admissibility of reports**

- (1) A final report, an interim report and the draft of a final or interim report sent to a person under section 115 are not admissible in any proceedings within subsection (2).
- (2) Those proceedings are—
  - (a) proceedings to determine civil or criminal liability in respect of any matter;
  - (b) proceedings before any employment tribunal;
  - (c) proceedings before a regulatory body (including proceedings for the purposes of investigating an allegation);
  - (d) proceedings to determine an appeal against a decision made in proceedings falling within paragraphs (a) to (c).
- (3) But the High Court may order that a final or interim report is admissible in proceedings within subsection (2) on an application by a person who is a party to the proceedings or otherwise entitled to appear in them.
- (4) The HSSIB may make representations to the High Court about any application under subsection (3).

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- (5) The High Court may make an order under subsection (3) only if it determines that the interests of justice served by admitting the report outweigh—
- (a) any adverse impact on current or future investigations by deterring persons from providing information for the purposes of investigations, and
  - (b) any adverse impact on securing the improvement of the safety of health care services provided to patients in England.

### *Investigatory powers etc*

## **118 Powers of entry, inspection and seizure**

- (1) If an investigator considers it necessary for the purposes of an investigation, the investigator may—
- (a) enter and inspect premises in England, other than premises used wholly or mainly as a private dwelling;
  - (b) inspect and take copies of any document at, or capable of being viewed using equipment at, the premises;
  - (c) inspect any equipment or other item at the premises;
  - (d) seize and remove from the premises any document, equipment or other item (unless that would risk the safety of any patient).
- (2) In subsection (1)(b) the reference to inspecting and taking copies of any document includes requiring any document which is kept in electronic form to be produced in a form in which it is legible and can be taken away.
- (3) Where any document, equipment or other item is seized by an investigator, or any copy of a document is taken, it may be retained by the HSSIB for so long as is necessary for the purposes of the investigation.
- (4) An investigator exercising any power conferred by this section must, if asked, produce evidence of the investigator’s authority from the HSSIB to act on its behalf.
- (5) The powers conferred by subsection (1) may be exercised in relation to premises in which there is a Crown interest, but only if the HSSIB gives reasonable notice to the occupier of the premises of its intention to enter and inspect the premises.
- (6) But if the Secretary of State certifies that it appears to the Secretary of State appropriate in the interests of national security that the powers conferred by subsection (1)—
- (a) should not be exercisable in relation to any premises in which there is a Crown interest and which are specified in the certificate, or
  - (b) should not be exercisable in relation to any such premises which are so specified except in circumstances specified in the certificate,
- those powers are not exercisable in relation to those premises or (as the case may be) are not exercisable except in the circumstances specified.
- (7) In this section “Crown interest” means—
- (a) an interest belonging to a government department or held in trust for Her Majesty for the purposes of a government department;
  - (b) an interest belonging to Her Majesty in right of the Crown;
  - (c) an interest belonging to Her Majesty in right of the Duchy of Lancaster;
  - (d) an interest belonging to the Duchy of Cornwall.

## **119 Powers to require information etc**

- (1) An investigator may by notice require any person—
  - (a) to attend at a specified time and place and to provide information by answering questions;
  - (b) to provide specified information, or information of a specified description, by a specified date;
  - (c) to provide specified documents, equipment or items, or documents, equipment or items of a specified description, by a specified date.
- (2) An investigator may give a person a notice only if the investigator reasonably believes that—
  - (a) in the case of a requirement under subsection (1)(a), the person is able to provide information which is necessary for the purposes of an investigation;
  - (b) in the case of a requirement under subsection (1)(b)—
    - (i) it is necessary to obtain the information for the purposes of an investigation, and
    - (ii) the person is able to provide it;
  - (c) in the case of a requirement under subsection (1)(c)—
    - (i) it is necessary to obtain the document, equipment or other item for the purposes of the HSSIB’s investigation function, and
    - (ii) the person is able to provide it.
- (3) But a person is not required by virtue of subsection (1) to provide any information, document, equipment or other item where—
  - (a) its provision would risk the safety of any patient,
  - (b) its provision might incriminate the person, or
  - (c) in the case of information or a document, the person would be entitled to refuse to provide it in any proceedings in any court on the grounds that it is the subject of legal professional privilege.
- (4) A notice must—
  - (a) specify the grounds for the investigator believing the matters in subsection (2),
  - (b) give an explanation of the consequences of failing to comply with the notice (see section 121), and
  - (c) attach evidence of the investigator’s authority from the HSSIB to exercise the powers conferred by this section.
- (5) If a notice requires a person to provide anything which is kept in electronic form, the notice may require it to be provided in a form in which it is legible.
- (6) An investigator may withdraw a notice under subsection (1) by giving notice of withdrawal to the person to whom the notice was given.
- (7) Where any document, equipment or other item is provided to an investigator pursuant to a notice, it may be retained by the HSSIB for so long as is necessary for the purposes of the HSSIB’s investigation function, unless its retention would risk the safety of any patient.
- (8) Where a person attends to answer questions pursuant to a notice under subsection (1)
  - (a), the HSSIB—
    - (a) must reimburse the person the reasonable costs incurred in attending;

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(b) may record, by any means, the answers given.

(9) In this section “specified” means specified in the notice.

## **120 Voluntary provision of information etc**

A person may disclose any information, document, equipment or other item to the HSSIB if the person reasonably believes that the disclosure is necessary for the purpose of enabling the HSSIB to carry out its investigation function.

## **121 Offences relating to investigations**

- (1) A person commits an offence if the person—
  - (a) intentionally obstructs an investigator in the performance of functions conferred by section 118, or
  - (b) fails without reasonable excuse to comply with a notice given under section 119.
- (2) A person commits an offence if the person provides information to the HSSIB for the purposes of the HSSIB’s investigation function which the person knows or suspects is false or misleading in a material respect.
- (3) It is a defence for a person charged with an offence under subsection (2) to show that—
  - (a) the person reasonably believed that the information would assist the HSSIB in carrying out its investigation function, and
  - (b) at the time of providing the information the person informed the HSSIB that the person knew or suspected that it was false or misleading.
- (4) If a person charged with an offence under subsection (2) relies on the defence under subsection (3), and evidence is adduced which is sufficient to raise an issue with respect to that defence, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.
- (5) A person who commits an offence under this section is liable on summary conviction to a fine.
- (6) Subsections (1)(a) and (5) apply to persons in the public service of the Crown as they apply to other persons.

### *Protection of material held by the HSSIB*

## **122 Prohibition on disclosure of HSSIB material**

- (1) The HSSIB, or an individual connected with the HSSIB, must not disclose protected material to any person.
- (2) In this Part “protected material” means any information, document, equipment or other item which—
  - (a) is held by the HSSIB, or an individual connected with the HSSIB, for the purposes of the HSSIB’s investigation function,
  - (b) relates to a qualifying incident (whether or not investigated by the HSSIB), and
  - (c) has not already been lawfully made available to the public.

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- (3) In this Part “individual connected with the HSSIB” means—
- (a) a member of the HSSIB,
  - (b) a member of a committee or sub-committee of the HSSIB,
  - (c) an investigator, or
  - (d) an individual (other than an investigator) who works for the HSSIB.
- (4) For the purposes of subsection (3)(d) an individual “works for” the HSSIB if the individual works—
- (a) under a contract of employment with the HSSIB,
  - (b) under a contract of apprenticeship with the HSSIB,
  - (c) under a contract under which the individual undertakes to do or perform personally any work or services for the HSSIB, or
  - (d) as an agency worker within the meaning of the Agency Workers Regulations 2010 (S.I. 2010/93) in circumstances where the HSSIB is the hirer within the meaning of those Regulations.
- (5) An individual who was, but has ceased to be, connected with the HSSIB must not disclose to any person, other than the HSSIB or an individual connected with the HSSIB, any information, document, equipment or other item held by that individual—
- (a) which the individual obtained because they were connected with the HSSIB,
  - (b) which, at the time they ceased to be connected with the HSSIB, was protected material, and
  - (c) which has not already been lawfully made available to the public.

### **123 Exceptions to prohibition on disclosure**

- (1) Section 122(1) does not apply to a disclosure which is required or authorised by—
- (a) Schedule 14,
  - (b) any other provision of this Part, or
  - (c) regulations made by the Secretary of State.
- (2) Regulations under subsection (1)(c) may, for example, require or authorise disclosures of protected material by reference to—
- (a) the kind of material that it is (for example, a particular kind of equipment),
  - (b) the matters to which it relates,
  - (c) the person from whom it was obtained,
  - (d) the purpose for which it was produced or is held, or
  - (e) the purpose for which it is disclosed.
- (3) But regulations under subsection (1)(c) may not require or authorise disclosures of protected material by reference to the qualifying incident to which the material relates.
- (4) Regulations under subsection (1)(c) may provide for a person to exercise a discretion in dealing with any matter.
- (5) Subject to subsection (6), regulations under subsection (1)(c) may provide that disclosures which are required or authorised by the regulations do not breach—
- (a) obligations of confidence owed by the person making the disclosure, or
  - (b) any other restrictions on disclosure.

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- (6) Nothing in regulations under subsection (1)(c) operates to require or authorise disclosures which would contravene the data protection legislation (but, for the purposes of this subsection, in determining whether any disclosure required or authorised by the regulations would do so, take the requirement or authorisation into account).

#### **124 Offences of unlawful disclosure**

- (1) A person commits an offence if the person—
- (a) breaches the prohibition in section 122(1) by knowingly or recklessly disclosing protected material to another person, and
  - (b) knows or suspects that the disclosure is prohibited.
- (2) An individual who was, but has ceased to be, connected with the HSSIB commits an offence if the individual—
- (a) breaches the prohibition in section 122(5) by knowingly or recklessly disclosing any information, document, equipment or other thing to another person, and
  - (b) knows or suspects that the disclosure is prohibited.
- (3) Subsection (4) applies where protected material is disclosed to a person not connected with the HSSIB—
- (a) in a draft report sent to the person under section 115(1),
  - (b) under paragraph 2, 3 or 4 of Schedule 14 (disclosures for purposes of an investigation, offence or safety risk), or
  - (c) under regulations under section 123(1)(c).
- (4) The person not connected with the HSSIB to whom protected material is disclosed as specified in subsection (3) commits an offence if the person—
- (a) knowingly or recklessly discloses the protected material to another person without reasonable excuse, and
  - (b) knows or suspects that it is protected material.
- (5) A person who commits an offence under this section is liable on summary conviction to a fine.

#### **125 Restriction of statutory powers requiring disclosure**

- (1) A power under any enactment (whenever passed or made) other than this Part to require the disclosure of, or to seize, any information, document, equipment or other item may not be used—
- (a) to require the disclosure of protected material by the HSSIB, or
  - (b) to seize protected material from the HSSIB.
- (2) Subsection (1) applies to a power to require disclosure, or to seize, however it is expressed (and, for example, it applies if the power is to require a person to give, supply, furnish or produce any information, document, equipment or other item).
- (3) Subsection (1) does not apply to a power to the extent that the provision conferring it is within the legislative competence of a devolved legislature.
- (4) A provision is within the legislative competence of a devolved legislature if—

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- (a) it would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament;
  - (b) it would be within the legislative competence of Senedd Cymru if it were contained in an Act of the Senedd (including any provision that could only be made with the consent of a Minister of the Crown);
  - (c) the provision—
    - (i) would be within the legislative competence of the Northern Ireland Assembly if contained in an Act of that Assembly, and
    - (ii) would not, if contained in a Bill for an Act of the Northern Ireland Assembly, result in the Bill requiring the consent of the Secretary of State under section 8 of the Northern Ireland Act 1998.
- (5) In this section “enactment” includes an enactment comprised in subordinate legislation within the meaning of the Interpretation Act 1978.
- (6) References to the HSSIB in subsection (1) include—
- (a) an individual connected with the HSSIB, and
  - (b) an individual who was, but has ceased to be, connected with the HSSIB.

#### *Relationship with other bodies*

### **126 Co-operation**

- (1) This section applies where—
- (a) the HSSIB is carrying out an investigation into a qualifying incident, and
  - (b) a listed person is also carrying out an investigation into the same or a related incident.
- (2) The HSSIB and the listed person must co-operate with each other regarding practical arrangements for co-ordinating those investigations.
- (3) The following are listed persons—
- (a) an NHS foundation trust, an NHS trust or any other person providing NHS services;
  - (b) NHS England;
  - (c) an integrated care board;
  - (d) a Special Health Authority;
  - (e) the Care Quality Commission;
  - (f) the Health Research Authority;
  - (g) the Human Tissue Authority;
  - (h) the Human Fertilisation and Embryology Authority;
  - (i) Health Education England;
  - (j) the Health Service Commissioner for England;
  - (k) the Parliamentary Commissioner for Administration;
  - (l) any regulatory body;
  - (m) the Health and Safety Executive;
  - (n) the Commissioner for Patient Safety.
- (4) The HSSIB must publish guidance about when a qualifying incident is to be regarded as related to another incident for the purposes of this section.

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- (5) If the HSSIB revises the guidance the HSSIB must publish it as revised.

## **127 Assistance of NHS bodies**

- (1) The HSSIB must comply with—
- (a) any request by a relevant NHS body to provide it with assistance in connection with the carrying out of investigations into incidents occurring during the provision of NHS services or occurring at premises at which NHS services are provided;
  - (b) any request by NHS England to provide any other relevant NHS body with such assistance;
  - (c) any request by the Secretary of State to provide a relevant NHS body with such assistance.
- (2) In subsection (1) “relevant NHS body” means—
- (a) an NHS foundation trust;
  - (b) an NHS trust;
  - (c) NHS England;
  - (d) an integrated care board.
- (3) For the purposes of this section giving assistance includes—
- (a) disseminating information about best practice,
  - (b) developing standards to be adopted, and
  - (c) giving advice, guidance or training.
- (4) Subsection (1) does not apply if—
- (a) the assistance requested is giving advice, guidance or training, and
  - (b) the HSSIB determines that it is impracticable for it to give the assistance.
- (5) The HSSIB may give assistance to a person other than a relevant NHS body in relation to any matter connected with the carrying out of investigations if the HSSIB has been requested to provide the assistance by the person to whom it is to be given.
- (6) But the HSSIB may give assistance under subsection (5) only to the extent that the assistance does not to any significant extent interfere with the exercise by the HSSIB of its investigation function.
- (7) The activities which the HSSIB may carry out in, or in connection with, giving assistance under subsection (5) are not restricted to activities carried out in the United Kingdom.
- (8) The HSSIB may impose charges for or in connection with giving assistance under subsection (5).
- (9) Charges under subsection (8) may be calculated on the basis that the HSSIB considers to be the appropriate commercial basis.

## **128 Investigations relating to Wales and Northern Ireland**

- (1) The HSSIB may enter into an agreement with any person for the HSSIB to carry out an investigation falling within subsection (2).
- (2) An investigation falls within this subsection if—



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- (a) it is an investigation into one or more incidents that have occurred, or are occurring, in the United Kingdom—
    - (i) during the provision of any of the services mentioned in subsection (3), or
    - (ii) at premises at which any of those services are, or were, provided,
  - (b) the incident or incidents have or may have implications for the safety of persons for whom those services are provided,
  - (c) the investigation is carried out for the purpose of identifying risks to the safety of such persons and addressing those risks by facilitating the improvement of systems and practices in the provision of any of the services mentioned in subsection (3), and
  - (d) the investigation does not involve the assessment or determination of blame or civil or criminal liability.
- (3) The services referred to in subsection (2) are—
- (a) services provided for the purposes of the health service continued under section 1(1) of the National Health Service (Wales) Act 2006, and
  - (b) health care, within the meaning of the Health and Social Care (Reform) Act (Northern Ireland) 2009, provided for the purposes of the system promoted under section 2(1) of that Act.
- (4) The HSSIB may impose charges for providing services under an agreement under subsection (1).
- (5) Those charges must not exceed the costs incurred by the HSSIB in providing the services.
- (6) The HSSIB may enter into an agreement under subsection (1) only if it considers that the provision of the services under the agreement will not to any significant extent interfere with the exercise by the HSSIB of its investigation function.

### *Oversight of functions*

## **129 Failure to exercise functions**

- (1) This section applies if the Secretary of State considers that—
- (a) the HSSIB is failing or has failed to exercise any of its functions, and
  - (b) the failure is significant.
- (2) The Secretary of State may direct the HSSIB to exercise such of its functions, in such manner and within such period, as the direction specifies.
- (3) But the Secretary of State may not give a direction under subsection (2) which directs the outcome of a particular investigation.
- (4) If the HSSIB fails to comply with a direction under subsection (2), the Secretary of State may—
- (a) exercise the functions specified in the direction, or
  - (b) make arrangements for some other person to exercise them on the Secretary of State's behalf.
- (5) The reference in subsection (1)(a) to exercising a function includes a reference to exercising it properly.

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- (6) A direction under subsection (2)—
- (a) must be in writing;
  - (b) may be varied or revoked by subsequent directions.

### **130 Review**

- (1) Before the end of the period mentioned in subsection (2), the Secretary of State must—
- (a) review the effectiveness of the exercise by the HSSIB of its investigation function,
  - (b) prepare and publish a report of the review, and
  - (c) lay the report before Parliament.
- (2) The period is four years beginning with the day on which section 110 comes into force.

*Offences: supplementary*

### **131 Offences by bodies corporate**

- (1) Where an offence under this Part is committed by a body corporate and is proved—
- (a) to have been committed with the consent or connivance of an officer of the body corporate, or
  - (b) to be attributable to any neglect on the part of an officer of the body corporate, the officer (as well as the body corporate) commits the offence and is liable to be proceeded against and punished accordingly.
- (2) In subsection (1) “officer”, in relation to a body corporate, means—
- (a) a director, manager, secretary or other similar officer, or
  - (b) any person purporting to act in any such capacity.

In paragraph (a) “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

### **132 Offences by partnerships**

- (1) Proceedings for an offence alleged to have been committed by a partnership may be brought in the name of the partnership.
- (2) Rules of court relating to the service of documents have effect in relation to proceedings for an offence as if the partnership were a body corporate.
- (3) For the purposes of such proceedings Schedule 3 to the Magistrates’ Courts Act 1980 applies as it applies in relation to a body corporate.
- (4) A fine imposed on a partnership on its conviction for an offence must be paid out of the partnership assets.
- (5) Where an offence is committed by a partnership and is proved—
- (a) to have been committed with the consent or connivance of a partner, or
  - (b) to be attributable to any neglect on the part of a partner, the partner (as well as the partnership) commits the offence and is liable to be proceeded against and punished accordingly.

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(6) In this section—

“offence” means an offence under this Part;

“partner” includes a person purporting to act as a partner.

### *Supplementary*

#### **133 Obligations of confidence etc**

(1) Subject to subsection (2), a disclosure of any information, document, equipment or other item which is required or authorised by or under section 119 or 120 or Schedule 14 does not breach—

- (a) any obligation of confidence owed by the person making the disclosure, or
- (b) any other restriction on disclosure.

(2) Nothing in this Part operates to require or authorise a disclosure of information which would contravene the data protection legislation (but, for the purposes of this subsection, in determining whether a disclosure required or authorised by or under this Part would do so, take the requirement or authorisation into account).

#### **134 Consequential amendments relating to Part 4**

Schedule 15 contains amendments consequential on this Part.

#### **135 Interpretation of Part 4**

In this Part—

“the 2006 Act” means the National Health Service Act 2006;

“Chief Investigator” means the person appointed in accordance with paragraph 3 of Schedule 13;

“data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act);

to “disclose”, in relation to information, documents, equipment and other items includes to permit access to such things;

“documents” includes personal and medical records;

“final report” means a report under section 113;

“health care services” means—

- (a) all forms of health care services provided 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;

“the HSSIB” has the meaning given by section 109(2);

“interim report” means a report under section 114;

“investigation”, except in the case of an investigation mentioned in section 126(1)(b), 127 or 128, means an investigation carried out by the HSSIB under section 110(1) and any related term is to be read accordingly;

the “investigation function” of the HSSIB is its function under section 110(1) (and see also section 111(1));

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*Status: This is the original version (as it was originally enacted).*

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“investigator” means a person authorised by the HSSIB to carry out functions in relation to investigations on its behalf;

“Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975;

“NHS foundation trust” has the meaning given by section 30 of the 2006 Act;

“NHS services” means health care services provided in England for the purposes of the health service continued under section 1(1) of the 2006 Act;

“NHS trust” means a National Health Service trust established under section 25 of the 2006 Act;

“notice” means notice in writing;

“patients” means individuals for whom health care services are provided;

“premises” includes a vehicle;

“protected material” has the meaning given by section 122(2);

“qualifying incident” has the meaning given by section 110(5);

“regulatory body” means—

- (a) the General Medical Council,
- (b) the General Dental Council,
- (c) the General Optical Council,
- (d) the General Osteopathic Council,
- (e) the General Chiropractic Council,
- (f) the General Pharmaceutical Council,
- (g) the Nursing and Midwifery Council,
- (h) the Health and Care Professions Council, or
- (i) any other regulatory body, within the meaning of Schedule 3 to the Health Act 1999, established at any time by an Order in Council under section 60 of that Act;

“Special Health Authority” means a Special Health Authority established under section 28 of the 2006 Act.

## PART 5

### VIRGINITY TESTING AND HYMENOPLASTY OFFENCES

#### CHAPTER 1

##### VIRGINITY TESTING OFFENCES

###### *Virginity testing offences: England and Wales*

### 136 Offence of virginity testing: England and Wales

- (1) It is an offence under the law of England and Wales for a person to carry out virginity testing.
- (2) “Virginity testing” means the examination of female genitalia, with or without consent, for the purpose (or purported purpose) of determining virginity.

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*Status: This is the original version (as it was originally enacted).*

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- (3) An offence is committed under subsection (1) only if the person—
  - (a) is in England and Wales, or
  - (b) is outside the United Kingdom, and is a United Kingdom national or habitually resident in England and Wales.
- (4) “United Kingdom national” means an individual who is—
  - (a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen,
  - (b) a person who under the British Nationality Act 1981 is a British subject, or
  - (c) a British protected person within the meaning of that Act.
- (5) In subsection (2), “female genitalia” means a vagina or vulva.

### **137 Offence of offering to carry out virginity testing: England and Wales**

- (1) It is an offence under the law of England and Wales—
  - (a) for a person in England and Wales to offer to carry out virginity testing in the United Kingdom or virginity testing that has a sufficient jurisdictional connection, or
  - (b) for a person anywhere to offer to carry out virginity testing if the person is a United Kingdom national or habitually resident in England and Wales.
- (2) Virginity testing has a sufficient jurisdictional connection for the purposes of subsection (1)(a) if it is carried out in relation to a person who is—
  - (a) a United Kingdom national, or
  - (b) habitually resident in the United Kingdom.
- (3) In this section—
  - “United Kingdom national” has the meaning given by section 136(4);
  - “virginity testing” has the meaning given by section 136(2).

### **138 Offence of aiding or abetting etc a person to carry out virginity testing: England and Wales**

- (1) It is an offence under the law of England and Wales for a person who is in England and Wales, or for a person who is outside England and Wales but who is a United Kingdom national or habitually resident in England and Wales, to aid, abet, counsel or procure the carrying out of virginity testing that has a sufficient jurisdictional connection.
- (2) Virginity testing has a sufficient jurisdictional connection for the purposes of subsection (1) if it is carried out in relation to a person who is—
  - (a) in the United Kingdom,
  - (b) a United Kingdom national, or
  - (c) habitually resident in the United Kingdom.
- (3) This section does not affect the application to an offence under section 136 of any rule of law relating to aiding, abetting, counselling or procuring.
- (4) In this section—
  - “United Kingdom national” has the meaning given by section 136(4);
  - “virginity testing” has the meaning given by section 136(2).

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*Status: This is the original version (as it was originally enacted).*

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### **139 Virginity testing offences in England and Wales: penalties**

- (1) A person who commits an offence under section 136, 137 or 138 is liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding the maximum summary term for either-way offences or a fine (or both);
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine (or both).
- (2) In subsection (1)(a) “the maximum summary term for either-way offences” means—
  - (a) in relation to an offence committed before the time when paragraph 24(2) of Schedule 22 to the Sentencing Act 2020 comes into force, 6 months;
  - (b) in relation to an offence committed after that time, 12 months.

#### *Virginity testing offences: Scotland*

### **140 Offence of virginity testing: Scotland**

- (1) It is an offence under the law of Scotland for a person to carry out virginity testing.
- (2) “Virginity testing” means the examination of female genitalia, with or without consent, for the purpose (or purported purpose) of determining virginity.
- (3) An offence is committed under subsection (1) only if the person—
  - (a) is in Scotland, or
  - (b) is outside the United Kingdom, and is a United Kingdom national or habitually resident in Scotland.
- (4) “United Kingdom national” means an individual who is—
  - (a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen,
  - (b) a person who under the British Nationality Act 1981 is a British subject, or
  - (c) a British protected person within the meaning of that Act.
- (5) In subsection (2), “female genitalia” means a vagina or vulva.

### **141 Offence of offering to carry out virginity testing: Scotland**

- (1) It is an offence under the law of Scotland—
  - (a) for a person in Scotland to offer to carry out virginity testing in the United Kingdom or virginity testing that has a sufficient jurisdictional connection, or
  - (b) for a person anywhere to offer to carry out virginity testing if the person is a United Kingdom national or habitually resident in Scotland.
- (2) Virginity testing has a sufficient jurisdictional connection for the purposes of subsection (1)(a) if it is carried out in relation to a person who is—
  - (a) a United Kingdom national, or
  - (b) habitually resident in the United Kingdom.
- (3) In this section—
 

“United Kingdom national” has the meaning given by section 140(4);

“virginity testing” has the meaning given by section 140(2).

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*Status: This is the original version (as it was originally enacted).*

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#### **142 Offence of aiding or abetting etc a person to carry out virginitv testing: Scotland**

- (1) It is an offence under the law of Scotland for a person who is in Scotland, or for a person who is outside Scotland but who is a United Kingdom national or habitually resident in Scotland, to aid, abet, counsel, procure or incite the carrying out of virginitv testing that has a sufficient jurisdictional connection.
- (2) Virginitv testing has a sufficient jurisdictional connection for the purposes of subsection (1) if it is carried out in relation to a person who is—
  - (a) in the United Kingdom,
  - (b) a United Kingdom national, or
  - (c) habitually resident in the United Kingdom.
- (3) This section does not affect the application to an offence under section 140 of any rule of law relating to aiding, abetting, counselling, procuring or inciting.
- (4) In this section—

“United Kingdom national” has the meaning given by section 140(4);  
“virginitv testing” has the meaning given by section 140(2).

#### **143 Virginitv testing offences in Scotland: penalties and supplementary**

- (1) A person who commits an offence under section 140, 141 or 142 is liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both);
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine (or both).
- (2) Where a person outside Scotland commits an offence under section 140, 142 or 143 the person may be prosecuted, tried and punished for the offence—
  - (a) in a sheriff court district in which the person is apprehended or in custody, or
  - (b) in a sheriff court district determined by the Lord Advocate,as if the offence had been committed in that district.
- (3) Where subsection (2) applies, the offence is, for all purposes incidental to or consequential on the trial and punishment, deemed to have been committed in that district.
- (4) In this section “sheriff court district” is to be construed in accordance with section 307(1) of the Criminal Procedure (Scotland) Act 1995 (interpretation).

#### *Virginitv testing offences: Northern Ireland*

#### **144 Offence of virginitv testing: Northern Ireland**

- (1) It is an offence under the law of Northern Ireland for a person to carry out virginitv testing.
- (2) “Virginitv testing” means the examination of female genitalia, with or without consent, for the purpose (or purported purpose) of determining virginitv.
- (3) An offence is committed under subsection (1) only if the person—
  - (a) is in Northern Ireland, or

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- (b) is outside the United Kingdom, and is a United Kingdom national or habitually resident in Northern Ireland.
- (4) “United Kingdom national” means an individual who is—
  - (a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen,
  - (b) a person who under the British Nationality Act 1981 is a British subject, or
  - (c) a British protected person within the meaning of that Act.
- (5) In subsection (2), “female genitalia” means a vagina or vulva.

**145 Offence of offering to carry out virginity testing: Northern Ireland**

- (1) It is an offence under the law of Northern Ireland—
  - (a) for a person in Northern Ireland to offer to carry out virginity testing in the United Kingdom or virginity testing that has a sufficient jurisdictional connection, or
  - (b) for a person anywhere to offer to carry out virginity testing if the person is a United Kingdom national or habitually resident in Northern Ireland.
- (2) Virginity testing has a sufficient jurisdictional connection for the purposes of subsection (1)(a) if it is carried out in relation to a person who is—
  - (a) a United Kingdom national, or
  - (b) habitually resident in the United Kingdom.
- (3) In this section—
  - “United Kingdom national” has the meaning given by section 144(4);
  - “virginity testing” has the meaning given by section 144(2).

**146 Offence of aiding or abetting etc a person to carry out virginity testing: Northern Ireland**

- (1) It is an offence under the law of Northern Ireland for a person who is in Northern Ireland, or for a person who is outside Northern Ireland but who is a United Kingdom national or habitually resident in Northern Ireland, to aid, abet, counsel or procure the carrying out of virginity testing that has a sufficient jurisdictional connection.
- (2) Virginity testing has a sufficient jurisdictional connection for the purposes of subsection (1) if it is carried out in relation to a person who is—
  - (a) in the United Kingdom,
  - (b) a United Kingdom national, or
  - (c) habitually resident in the United Kingdom.
- (3) This section does not affect the application to an offence under section 144 of any rule of law relating to aiding, abetting, counselling or procuring.
- (4) In this section—
  - “United Kingdom national” has the meaning given by section 144(4);
  - “virginity testing” has the meaning given by section 144(2).



## **147 Virginity testing offences in Northern Ireland: penalties**

A person who commits an offence under section 144, 145 or 146 is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum (or both);
- (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine (or both).

## **CHAPTER 2**

### **HYMENOPLASTY OFFENCES**

#### *Hymenoplasty offences: England and Wales*

## **148 Offence of carrying out hymenoplasty: England and Wales**

- (1) It is an offence under the law of England and Wales for a person to carry out hymenoplasty.
- (2) “Hymenoplasty” means the reconstruction of the hymen (with or without consent).
- (3) An offence is committed under subsection (1) only if the person—
  - (a) is in England and Wales, or
  - (b) is outside the United Kingdom, and is a United Kingdom national or habitually resident in England and Wales.
- (4) “United Kingdom national” means an individual who is—
  - (a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen,
  - (b) a person who under the British Nationality Act 1981 is a British subject, or
  - (c) a British protected person within the meaning of that Act.

## **149 Offence of offering to carry out hymenoplasty: England and Wales**

- (1) It is an offence under the law of England and Wales—
  - (a) for a person in England and Wales to offer to carry out hymenoplasty in the United Kingdom or hymenoplasty that has a sufficient jurisdictional connection, or
  - (b) for a person anywhere to offer to carry out hymenoplasty if the person is a United Kingdom national or habitually resident in England and Wales.
- (2) Hymenoplasty has a sufficient jurisdictional connection for the purposes of subsection (1)(a) if it is carried out in relation to a person who is—
  - (a) a United Kingdom national, or
  - (b) habitually resident in the United Kingdom.
- (3) In this section—

“United Kingdom national” has the meaning given by section 148(4);  
“hymenoplasty” has the meaning given by section 148(2).

### **150 Offence of aiding or abetting etc a person to carry out hymenoplasty: England and Wales**

- (1) It is an offence under the law of England and Wales for a person who is in England and Wales, or for a person who is outside England and Wales but who is a United Kingdom national or habitually resident in England and Wales, to aid, abet, counsel or procure the carrying out of hymenoplasty that has a sufficient jurisdictional connection.
- (2) Hymenoplasty has a sufficient jurisdictional connection for the purposes of subsection (1) if it is carried out in relation to a person who is—
  - (a) in the United Kingdom,
  - (b) a United Kingdom national, or
  - (c) habitually resident in the United Kingdom.
- (3) This section does not affect the application to an offence under section 148 of any rule of law relating to aiding, abetting, counselling or procuring.
- (4) In this section—
  - “United Kingdom national” has the meaning given by section 148(4);
  - “hymenoplasty” has the meaning given by section 148(2).

### **151 Hymenoplasty offences in England and Wales: penalties**

- (1) A person who commits an offence under section 148, 149 or 150 is liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding the maximum summary term for either-way offences or a fine (or both);
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine (or both).
- (2) In subsection (1)(a) “the maximum summary term for either-way offences” means—
  - (a) in relation to an offence committed before the time when paragraph 24(2) of Schedule 22 to the Sentencing Act 2020 comes into force, 6 months;
  - (b) in relation to an offence committed after that time, 12 months.

### *Hymenoplasty offences: Scotland*

### **152 Offence of carrying out hymenoplasty: Scotland**

- (1) It is an offence under the law of Scotland for a person to carry out hymenoplasty.
- (2) “Hymenoplasty” means the reconstruction of the hymen (with or without consent).
- (3) An offence is committed under subsection (1) only if the person—
  - (a) is in Scotland, or
  - (b) is outside the United Kingdom, and is a United Kingdom national or habitually resident in Scotland.
- (4) “United Kingdom national” means an individual who is—
  - (a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen,
  - (b) a person who under the British Nationality Act 1981 is a British subject, or
  - (c) a British protected person within the meaning of that Act.

### **153 Offence of offering to carry out hymenoplasty: Scotland**

- (1) It is an offence under the law of Scotland—
  - (a) for a person in Scotland to offer to carry out hymenoplasty in the United Kingdom or hymenoplasty that has a sufficient jurisdictional connection, or
  - (b) for a person anywhere to offer to carry out hymenoplasty if the person is a United Kingdom national or habitually resident in Scotland.
- (2) Hymenoplasty has a sufficient jurisdictional connection for the purposes of subsection (1)(a) if it is carried out in relation to a person who is—
  - (a) a United Kingdom national, or
  - (b) habitually resident in the United Kingdom.
- (3) In this section—

“United Kingdom national” has the meaning given by section 152(4);  
“hymenoplasty” has the meaning given by section 152(2).

### **154 Offence of aiding or abetting etc a person to carry out hymenoplasty: Scotland**

- (1) It is an offence under the law of Scotland for a person who is in Scotland, or for a person who is outside Scotland but who is a United Kingdom national or habitually resident in Scotland, to aid, abet, counsel, procure or incite the carrying out of hymenoplasty that has a sufficient jurisdictional connection.
- (2) Hymenoplasty has a sufficient jurisdictional connection for the purposes of subsection (1) if it is carried out in relation to a person who is—
  - (a) in the United Kingdom,
  - (b) a United Kingdom national, or
  - (c) habitually resident in the United Kingdom.
- (3) This section does not affect the application to an offence under section 152 of any rule of law relating to aiding, abetting, counselling, procuring or inciting.
- (4) In this section—

“United Kingdom national” has the meaning given by section 152(4);  
“hymenoplasty” has the meaning given by section 152(2).

### **155 Hymenoplasty offences in Scotland: penalties and supplementary**

- (1) A person who commits an offence under section 152, 153 or 154 is liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both);
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine (or both).
- (2) Where a person outside Scotland commits an offence under section 152, 153 or 154 the person may be prosecuted, tried and punished for the offence—
  - (a) in a sheriff court district in which the person is apprehended or in custody, or
  - (b) in a sheriff court district determined by the Lord Advocate,  
as if the offence had been committed in that district.

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- (3) Where subsection (2) applies, the offence is, for all purposes incidental to or consequential on the trial and punishment, deemed to have been committed in that district.
- (4) In this section “sheriff court district” is to be construed in accordance with section 307(1) of the Criminal Procedure (Scotland) Act 1995 (interpretation).

*Hymenoplasty offences: Northern Ireland*

**156 Offence of carrying out hymenoplasty: Northern Ireland**

- (1) It is an offence under the law of Northern Ireland for a person to carry out hymenoplasty.
- (2) “Hymenoplasty” means the reconstruction of the hymen (with or without consent).
- (3) An offence is committed under subsection (1) only if the person—
  - (a) is in Northern Ireland, or
  - (b) is outside the United Kingdom, and is a United Kingdom national or habitually resident in Northern Ireland.
- (4) “United Kingdom national” means an individual who is—
  - (a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen,
  - (b) a person who under the British Nationality Act 1981 is a British subject, or
  - (c) a British protected person within the meaning of that Act.

**157 Offence of offering to carry out hymenoplasty: Northern Ireland**

- (1) It is an offence under the law of Northern Ireland—
  - (a) for a person in Northern Ireland to offer to carry out hymenoplasty in the United Kingdom or hymenoplasty that has a sufficient jurisdictional connection, or
  - (b) for a person anywhere to offer to carry out hymenoplasty if the person is a United Kingdom national or habitually resident in Northern Ireland.
- (2) Hymenoplasty has a sufficient jurisdictional connection for the purposes of subsection (1)(a) if it is carried out in relation to a person who is—
  - (a) a United Kingdom national, or
  - (b) habitually resident in the United Kingdom.
- (3) In this section—
  - “United Kingdom national” has the meaning given by section 156(4);
  - “hymenoplasty” has the meaning given by section 156(2).

**158 Offence of aiding or abetting etc a person to carry out hymenoplasty: Northern Ireland**

- (1) It is an offence under the law of Northern Ireland for a person who is in Northern Ireland, or for a person who is outside Northern Ireland but who is a United Kingdom

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national or habitually resident in Northern Ireland, to aid, abet, counsel or procure the carrying out of hymenoplasty that has a sufficient jurisdictional connection.

- (2) Hymenoplasty has a sufficient jurisdictional connection for the purposes of subsection (1) if it is carried out in relation to a person who is—
- (a) in the United Kingdom,
  - (b) a United Kingdom national, or
  - (c) habitually resident in the United Kingdom.
- (3) This section does not affect the application to an offence under section 156 of any rule of law relating to aiding, abetting, counselling or procuring.
- (4) In this section—  
“United Kingdom national” has the meaning given by section 156(4);  
“hymenoplasty” has the meaning given by section 156(2).

### **159 Hymenoplasty offences in Northern Ireland: penalties**

A person who commits an offence under section 156, 157 or 158 is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum (or both);
- (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine (or both).

## **CHAPTER 3**

### CONSEQUENTIAL AMENDMENTS

### **160 Consequential amendments relating to Part 5**

Schedule 16 contains consequential amendments.

## **PART 6**

### MISCELLANEOUS

#### *Pharmaceutical services*

### **161 Pharmaceutical services: remuneration in respect of vaccines etc**

- (1) In section 164 of the National Health Service Act 2006 (remuneration for persons providing pharmaceutical services)—
- (a) in subsection (8A) for “special medicinal products” substitute “any of the following—
    - (a) drugs or medicines used for vaccinating or immunising people against disease,
    - (b) anything used in connection with the supply or administration of drugs or medicines within paragraph (a),

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- (c) drugs or medicines, not within paragraph (a), that are used for preventing or treating a disease that, at the time the regulations are made, the Secretary of State considers to be a pandemic disease or at risk of becoming a pandemic disease,
    - (d) anything used in connection with the supply or administration of drugs or medicines within paragraph (c), or
    - (e) a product which is a special medicinal product for the purposes of regulation 167 of the Human Medicines Regulations 2012 (S.I. 2012/1916).”;
  - (b) in subsection (8D)—
    - (i) for “special medicinal products are” substitute “anything within subsection (8A)(a) to (e) is”;
    - (ii) in paragraph (b), for “special medicinal products” substitute “that thing,”;
  - (c) in subsection (8E), omit the definition of “special medicinal product”;
  - (d) after subsection (8E) insert—
 

“(8F) Where regulations include provision made in reliance on subsection (8A)(c) or (d) and the Secretary of State considers that the disease to which it relates is no longer a pandemic disease or at risk of becoming a pandemic disease, the Secretary of State must revoke that provision within such period as the Secretary of State considers reasonable (taking into account, in particular, the need for any transitional arrangements).”
- (2) In section 88 of the National Health Service (Wales) Act 2006 (remuneration for persons providing pharmaceutical services)—
  - (a) in subsection (8A) for “special medicinal products” substitute “any of the following—
    - (a) drugs or medicines used for vaccinating or immunising people against disease,
    - (b) anything used in connection with the supply or administration of drugs or medicines within paragraph (a),
    - (c) drugs or medicines, not within paragraph (a), that are used for preventing or treating a disease that, at the time the regulations are made, the Welsh Ministers consider to be a pandemic disease or at risk of becoming a pandemic disease,
    - (d) anything used in connection with the supply or administration of drugs or medicines within paragraph (c), or
    - (e) a product which is a special medicinal product for the purposes of regulation 167 of the Human Medicines Regulations 2012 (S.I. 2012/1916).”;
  - (b) in subsection (8D)—
    - (i) for “special medicinal products are” substitute “anything within subsection (8A)(a) to (e) is”;
    - (ii) in paragraph (b), for “special medicinal products” substitute “that thing,”;
  - (c) in subsection (8E), omit the definition of “special medicinal product”;
  - (d) after subsection (8E) insert—

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“(8F) Where regulations include provision made in reliance on subsection (8A)(c) or (d) and the Welsh Ministers consider that the disease to which it relates is no longer a pandemic disease or at risk of becoming a pandemic disease, the Welsh Ministers must revoke that provision within such period as the Welsh Ministers consider reasonable (taking into account, in particular, the need for any transitional arrangements).”

### *International healthcare*

## **162 International healthcare arrangements**

- (1) The Healthcare (European Economic Area and Switzerland Arrangements) Act 2019 is renamed the Healthcare (International Arrangements) Act 2019.
- (2) That Act is amended as follows.
- (3) Omit section 1 (power to make healthcare payments).
- (4) For section 2 substitute—

### **“2 Healthcare agreements and payments**

- (1) The Secretary of State may by regulations make provision for the purpose of giving effect to a healthcare agreement (including provision about payments).
- (2) The Secretary of State may by regulations make provision authorising the Secretary of State to make a payment (otherwise than under a healthcare agreement) in respect of healthcare provided in a relevant country or territory, but only where the Secretary of State considers that exceptional circumstances justify the payment.
- (3) In subsection (2) “relevant country or territory” means a country or territory, outside the United Kingdom, in respect of which there is a healthcare agreement.
- (4) Regulations under this section may include provision about administrative arrangements (including provision about evidential requirements).
- (5) Regulations under this section may—
  - (a) confer functions on a relevant public authority or a Scottish or Welsh health board (including discretions);
  - (b) provide for the delegation of functions to a relevant public authority or a Scottish or Welsh health board.
- (6) The Secretary of State may give directions to a person about the exercise of any functions exercisable by the person under regulations made by virtue of subsection (5) (and may vary or revoke any such directions).
- (7) In this section “relevant public authority” means a person who exercises functions of a public nature other than—
  - (a) the Scottish Ministers,
  - (b) a Scottish public authority with mixed functions or no reserved functions (within the meaning of the Scotland Act 1998),

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- (c) the Welsh Ministers,
- (d) a devolved Welsh authority as defined by section 157A of the Government of Wales Act 2006,
- (e) a Northern Ireland department, or
- (f) any other person whose functions—
  - (i) are exercisable only or mainly in or as regards Northern Ireland, and
  - (ii) relate only or mainly to transferred matters within the meaning of the Northern Ireland Act 1998.

(8) In this section—

“Scottish health board” means a Health Board established under section 2(1)(a) of the National Health Service (Scotland) Act 1978;

“Welsh health board” means a Local Health Board established under section 11 of the National Health Service (Wales) Act 2006.

#### **2A Healthcare agreements and payments: powers of devolved authorities**

- (1) A devolved authority may by regulations make provision for the purpose of giving effect to a healthcare agreement (including provision about payments).
- (2) No provision may be made by a devolved authority under subsection (1) unless the provision is within the devolved competence of that devolved authority (and any applicable consent requirement under section 2B has been complied with).
- (3) In this section “devolved authority” means the Scottish Ministers, the Welsh Ministers or a Northern Ireland department.
- (4) For the purposes of this section—
  - (a) provision is within the devolved competence of the Scottish Ministers if it would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament;
  - (b) provision is within the devolved competence of the Welsh Ministers if it would be within the legislative competence of Senedd Cymru if it were contained in an Act of Senedd Cymru (including any provision that could only be made with the consent of a Minister of the Crown);
  - (c) provision is within the devolved competence of a Northern Ireland department if it would be within the legislative competence of the Northern Ireland Assembly if it were contained in an Act of that Assembly.
- (5) Regulations under this section may include provision about administrative arrangements (including provision about evidential requirements).
- (6) Regulations under this section may—
  - (a) confer functions on a public authority (including discretions);
  - (b) provide for the delegation of functions to a public authority.
- (7) A devolved authority may give directions to a person about the exercise of any functions exercisable by the person under regulations made by that devolved authority by virtue of subsection (6) (and may vary or revoke any such directions).



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- (8) In this section “public authority” means a person who exercises functions of a public nature.

### **2B Regulations under section 2A: consent requirements**

- (1) The consent of a Minister of the Crown is required before any provision is made by the Welsh Ministers in regulations under section 2A(1) so far as that provision, if contained in an Act of Senedd Cymru, would require the consent of a Minister of the Crown.
- (2) The consent of the Secretary of State is required before any provision is made by a Northern Ireland department in regulations under section 2A(1) so far as that provision, if contained in a Bill in the Northern Ireland Assembly, would require the consent of the Secretary of State.”
- (5) In section 3 (meaning of “healthcare” and “healthcare agreement”), for the definition of “healthcare agreement” substitute—
- ““healthcare agreement” means an agreement or other commitment between the United Kingdom and either a country or territory outside the United Kingdom or an international organisation, concerning healthcare provided anywhere in the world;”.
- (6) In section 7 (regulations and directions)—
- (a) in subsection (1), after “A power” insert “of the Secretary of State or Welsh Ministers”;
- (b) after subsection (1) insert—
- “(1A) A power of a Northern Ireland department to make regulations under section 2A is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).”;
- (c) for subsection (4) substitute—
- “(4) A statutory instrument containing regulations under this Act may not be made by the Secretary of State unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.”;
- (d) omit subsection (5);
- (e) after subsection (5) insert—
- “(5A) Regulations made by the Scottish Ministers under section 2A are subject to the affirmative procedure (see Part 2 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10)).
- (5B) A statutory instrument containing regulations under section 2A may not be made by the Welsh Ministers unless a draft of the instrument has been laid before and approved by a resolution of Senedd Cymru.
- (5C) Regulations may not be made by a Northern Ireland department under section 2A unless a draft of the regulations has been laid before and approved by a resolution of the Northern Ireland Assembly.”

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- (7) In section 8 (short title etc), in subsection (3), for “Healthcare (European Economic Area and Switzerland Arrangements) Act 2019” substitute “Healthcare (International Arrangements) Act 2019”.

### *Social care*

#### **163 Regulation of local authority functions relating to adult social care**

- (1) Chapter 3 of Part 1 of the Health and Social Care Act 2008 (quality of health and social care) is amended as follows.
- (2) In section 46 (reviews and performance assessments by the Care Quality Commission), in the heading, at the end insert “: registered service providers”.
- (3) After section 46 insert—

#### **“46A Reviews and performance assessments: local authorities**

- (1) The Commission must, in accordance with this section—
- (a) conduct reviews of the exercise of regulated care functions by English local authorities,
  - (b) assess the performance of those authorities following each such review, and
  - (c) publish a report of its assessment.
- (2) In this section “regulated care functions” means such functions under Part 1 of the Care Act 2014 (functions relating to adult social care in England) as may be prescribed.
- (3) Regulations under subsection (2) may prescribe—
- (a) all functions of English local authorities under Part 1 of the Care Act 2014 or some of their functions under that Part;
  - (b) the whole of a function or a particular aspect of it.
- (4) The Secretary of State—
- (a) must set, and may from time to time revise, objectives and priorities for the Commission in relation to the assessment under this section of the performance of English local authorities, and
  - (b) must inform the Commission of the objectives and priorities.
- (5) The Commission—
- (a) must determine, and may from time to time revise, indicators of quality for the purposes of the assessment under this section of the performance of English local authorities, and
  - (b) must obtain the approval of the Secretary of State in relation to the indicators.
- (6) The Secretary of State may direct the Commission to revise the indicators under subsection (5).
- (7) Different objectives and priorities may be set, and different indicators of quality may be determined, for different cases.

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- (8) The Commission—
- (a) must prepare, and may from time to time revise, a statement—
    - (i) setting out the frequency with which reviews under this section are to be conducted and the period to which they are to relate, and
    - (ii) describing the method that it proposes to use in assessing and evaluating the performance of a English local authority under this section, and
  - (b) must obtain the approval of the Secretary of State in relation to the statement.
- (9) The Secretary of State may direct the Commission to revise the statement under subsection (8).
- (10) The statement may—
- (a) make different provision about frequency and period of reviews for different cases, and
  - (b) describe different methods for different cases.
- (11) The Commission must publish—
- (a) the objectives and priorities under subsection (4),
  - (b) the indicators of quality under subsection (5), and
  - (c) the statement under subsection (8).
- (12) For the purposes of this section “English local authority” includes the Council of the Isles of Scilly only so far as references to a local authority in Part 1 of the Care Act 2014 include references to that Council as a result of an order under section 128(4) of that Act.”
- (4) In section 48 (special reviews and investigations)—
- (a) in subsection (2), after “section 46” insert “, 46A”;
  - (b) in subsection (3A), after “treated as a review” insert “or investigation”.
- (5) In section 50 (failings by English local authorities), in subsection (1), after “46” insert “, 46A”.
- (6) In section 60 (inspections)—
- (a) in subsection (1), after paragraph (c) (but before the “or” at the end) insert—
    - “(ca) the exercise of functions by an English local authority,”;
  - (b) after subsection (2) insert—
    - “(3) In this section “English local authority” has the same meaning as in section 46A (see subsection (12) of that section).”

## **164 Default powers of Secretary of State in relation to adult social care**

- (1) In section 7D of the Local Authority Social Services Act 1970 (default powers of Secretary of State as respects social services functions of local authorities)—
- (a) in subsection (1), for the words from “imposed” to “2002” substitute “referred to in subsection (4)”;
  - (b) after subsection (3) insert—

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“(4) Subsection (1) does not apply in relation to a duty imposed by or under—

- (a) the Children Act 1989,
- (b) section 1 or 2(4) of the Adoption (Intercountry Aspects) Act 1999,
- (c) the Adoption and Children Act 2002, or
- (d) Part 1 of the Care Act 2014.”

(2) The Care Act 2014 is amended in accordance with subsections (3) and (4).

(3) After section 72 insert—

*“Default by local authority*

### **72A Default power of Secretary of State**

- (1) Where the Secretary of State is satisfied that a local authority is failing, or has failed, to discharge any of its functions under or by virtue of this Part to an acceptable standard, the Secretary of State may give to the local authority any directions that the Secretary of State considers appropriate for the purpose of addressing the failure.
- (2) The directions may include provision requiring the local authority—
  - (a) to act in accordance with advice given by the Secretary of State or a person nominated by the Secretary of State,
  - (b) to collaborate with the Secretary of State or a person nominated by the Secretary of State in taking steps specified in the directions, or
  - (c) to provide the Secretary of State or a person nominated by the Secretary of State with information of a description specified in the directions, on request or otherwise.
- (3) If the Secretary of State considers it necessary for the purpose of addressing the failure, the directions may include provision—
  - (a) for specified functions of the local authority to be exercised by the Secretary of State or a person nominated by the Secretary of State for a period specified in the direction or for so long as the Secretary of State considers appropriate, and
  - (b) requiring the local authority to comply with any instructions of the Secretary of State or the nominee in relation to the exercise of the functions.
- (4) So far as is appropriate in consequence of directions given by virtue of subsection (3), a reference (however expressed) in an enactment, instrument or other document to a local authority is to be read as a reference to the person by whom the function is exercisable.
- (5) If directions given by virtue of subsection (3) expire or are revoked without being replaced then, so far as is appropriate in consequence of the expiry or revocation, a reference (however expressed) in an instrument or other document to the person by whom the function was exercisable is to be read as a reference to the local authority to whom the directions were given.

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- (6) The Secretary of State may, for the purposes of cases in which directions are given under subsection (3)(a), make regulations disapplying or modifying an enactment which confers a function on the Secretary of State in respect of a function of a local authority.
- (7) Directions under this section may require the local authority to provide financial assistance to the Secretary of State, or a person nominated by the Secretary of State, for the purpose of meeting costs incurred by the Secretary of State or the nominee as a result of the directions.

### **72B Default power of Secretary of State: supplementary**

- (1) Before giving directions under section 72A the Secretary of State must give the local authority concerned an opportunity to make representations about the proposed directions, except so far as the Secretary of State considers that it is impractical to do so for reasons of urgency.
  - (2) The power to give directions under section 72A includes a power to vary or revoke the directions by subsequent directions.
  - (3) Subsection (1) does not apply in relation to proposed directions varying previous directions if the Secretary of State does not consider the variations to be significant.
  - (4) Directions under section 72A must be in writing.
  - (5) The Secretary of State must publish—
    - (a) any directions given under section 72A, and
    - (b) the reasons for giving them.
  - (6) Directions under section 72A are enforceable, on the Secretary of State’s application, by a mandatory order.”
- (4) In section 125(4) (regulations and orders subject to affirmative procedure), after paragraph (k) insert—
- “(ka) regulations under section 72A(6) (modification of enactments where local authority functions are exercised by the Secretary of State or a nominee);”.

## **165 Care Quality Commission’s powers in relation to local authority failings**

- (1) The Health and Social Care Act 2008 is amended as follows.
- (2) In section 48 (special reviews and investigations), in subsection (6) omit “or (3)”.
- (3) In section 50 (failings by English local authorities)—
  - (a) in subsection (2), in the words before paragraph (a), omit “subject to subsection (3)”;
  - (b) for subsections (3) and (4) substitute—

“(3A) Nothing in subsection (2) prevents a report published under section 46(1)(c), 46A(1)(c), 46B(1)(c) or 48(4) from specifying respects in which the Commission considers a local authority to

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be failing and making recommendations to the local authority for addressing the failure.”

## **166 Cap on care costs for charging purposes**

(1) The Care Act 2014 is amended as follows.

(2) In section 15 (cap on care costs), for subsections (2) and (3) substitute—

“(2) The reference to costs accrued in meeting the adult’s eligible needs is a reference—

- (a) in relation to eligible needs met by a local authority, to any amount the local authority charged the adult under section 14(1)(a) or 48(5) for meeting those needs;
- (b) in relation to eligible needs met by a person other than a local authority, to what the cost of meeting those eligible needs would have been to the local authority that was the responsible local authority when the needs were met.

(3) A reference in subsection (2)(b) to eligible needs does not include any eligible needs during a period when the adult had neither a personal budget nor an independent personal budget, other than eligible needs at any time after a local authority was required to carry out a needs assessment that resulted in the preparation of a personal budget or an independent personal budget for the adult.

(3A) For the purposes of this Part an adult’s needs are “eligible needs” if—

- (a) the needs meet the eligibility criteria,
- (b) the needs are not being met by a carer, and
- (c) the adult is ordinarily resident or present in the area of a local authority.

(3B) In this Part, “the responsible local authority” means the local authority in whose area the adult is ordinarily resident or in whose area the adult is present (where the adult is of no settled residence).”

(3) In section 24 (the steps for the local authority to take), for subsection (3) substitute—

“(3) Where, following a determination under section 13(1), no local authority is going to meet any of an adult’s needs for care and support, the local authority that is for the time being the responsible local authority must prepare an independent personal budget for the adult (see section 28) if—

- (a) the adult has any eligible needs, and
- (b) the adult has at any time either—
  - (i) asked a local authority that was, at that time, the responsible local authority, to prepare an independent personal budget, or
  - (ii) had needs met by a local authority as mentioned in section 24(1).”

(4) In section 26 (personal budget), for subsections (1) and (2) substitute—

“(1) A personal budget is a statement which specifies, in respect of the adult’s needs which a local authority is required or decides to meet as mentioned in section 24(1)—

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- (a) the current cost to the local authority of meeting those needs,
  - (b) how much of that cost the adult will be required to pay under section 14(1)(a), and
  - (c) the balance, if any, of the cost referred to in paragraph (a).
- (2) If the needs referred to in section 26(1) include eligible needs, the personal budget must also specify—
  - (a) the current cost to the local authority of meeting those eligible needs,
  - (b) how much of that cost the adult will be required to pay under section 14(1)(a), and
  - (c) where the amount referred to in paragraph (a) includes daily living costs, the amount attributable to those daily living costs.
- (2A) If the adult has needs which a local authority is required or decides to meet as mentioned in section 24(1) and also has eligible needs which are not being met by any local authority, the personal budget must specify—
  - (a) what the current cost would be to the responsible local authority of meeting those eligible needs, and
  - (b) where the amount referred to in paragraph (a) includes daily living costs, the amount attributable to those daily living costs.”
- (5) In section 28 (independent personal budget)—
  - (a) for subsection (1) substitute—
    - “(1) An independent personal budget is a statement which specifies what the current cost would be to the responsible local authority of meeting the adult’s eligible needs (but the independent personal budget need not specify the cost of meeting those needs at any time when the local authority required to prepare it has ceased to be the responsible local authority or at any time when the adult has needs which a local authority is required or decides to meet as mentioned in section 24(1)).”;
  - (b) omit subsection (3).
- (6) In section 29 (care account), in subsection (1), in the words before paragraph (a), for the words from “the local authority” to “present” substitute “the responsible local authority”.
- (7) In section 31 (adults with capacity to request direct payments), in subsection (1), for paragraph (a) substitute—
  - “(a) a personal budget for an adult specifies an amount under section 26(1) (c) in respect of any needs, and”.
- (8) In section 32 (adults without capacity to request direct payments), in subsection (1), for paragraph (a) substitute—
  - “(a) a personal budget for an adult specifies an amount under section 26(1) (c) in respect of any needs, and”.
- (9) In section 37 (notification, assessment etc.), in subsection (15), omit paragraph (a).
- (10) In section 80 (Part 1: interpretation), in the table in subsection (1), at the appropriate places insert—

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“Eligible needs	Section 15(3A)”
“The responsible local authority	Section 15(3B)”.

*Social care: regulation and financial assistance*

**167 Provision of social care services: financial assistance**

- (1) The Health and Social Care Act 2008 is amended as follows.
- (2) In section 149 (power of Secretary of State to give financial assistance in relation to provision of health or social care services)—
  - (a) in subsection (1)(a) and (b), omit “or of social care services”;
  - (b) after subsection (1) insert—
 

“(1A) The Secretary of State may give financial assistance to bodies which are engaged in—

    - (a) the provision in England of social care services, or
    - (b) the provision to other persons of services that are connected with the provision in England by those other persons of social care services.

(1B) Assistance may be given to a body under subsection (1A) for the purposes of the provision of social care services only if those services are provided in England.”
- (3) In section 151 (forms of assistance under section 149), in subsection (2)(d), after “149(1)” insert “or (1A)”.
- (4) For section 153 substitute—

**“153 Directions to certain NHS bodies**

- (1) The Secretary of State may direct the following to exercise any functions of the Secretary of State in relation to financial assistance under section 149(1)—
  - (a) a National Health Service trust all or most of whose hospitals, establishments and facilities are situated in England, or
  - (b) a Special Health Authority performing functions only or mainly in respect of England.
- (2) The Secretary of State may direct any Special Health Authority to exercise any functions of the Secretary of State in relation to financial assistance under section 149(1A).
- (3) The Secretary of State may direct the following to exercise any functions of the Secretary of State in relation to financial assistance under section 149(2) so far as those functions relate to the establishment of bodies which are to be wholly or mainly engaged in the provision of health services or services connected to health services—
  - (a) a National Health Service trust all or most of whose hospitals, establishments and facilities are situated in England, or



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- (b) a Special Health Authority performing functions only or mainly in respect of England.
- (4) The Secretary of State may direct any Special Health Authority to exercise any functions of the Secretary of State in relation to financial assistance under section 149(2) so far as they are not functions to which subsection (3) above applies.
- (5) The Secretary of State may give directions to a body about the exercise of any functions that it is directed to exercise under any of subsections (1) to (4).”
- (5) In section 154 (arrangements with other third parties)—
  - (a) in subsection (1)(a), after “section 149” insert “(1)”;
  - (b) after subsection (1) insert—
    - “(1A) The Secretary of State may make arrangements for—
      - (a) financial assistance under section 149(1A) to be given, or
      - (b) other functions relating to such assistance to be exercised,by a person other than a Special Health Authority (as to Special Health Authorities, see section 153(2)).”;
  - (c) in subsections (2), (3), (4) and (5) after “subsection (1)” insert “or (1A)”.
- (6) In section 155 (power to form company), after “section 154(1)” insert “or (1A)”.

### *Professional regulation*

## **168 Regulation of health care and associated professions**

- (1) The Health Act 1999 is amended as follows.
- (2) In section 60 (regulation of health professions and social care workers etc)—
  - (a) in subsection (1), after paragraph (b) insert—
    - “(bza) deregulating a profession regulated by an enactment to which subsection (2) applies if the profession does not appear to Her to require regulation for the protection of the public,”;
  - (b) in subsection (1), after paragraph (bd) insert—
    - “(be) deregulating any social care workers in England who do not appear to Her to require regulation for the protection of the public,”;
  - (c) for subsection (2) substitute—
    - “(2) The professions referred to in subsection (1)(a) and (bza) are the professions regulated by any of the following—
      - (a) the Medical Act 1983;
      - (b) the Dentists Act 1984;
      - (c) the Opticians Act 1989;
      - (d) the Osteopaths Act 1993;
      - (e) the Chiropractors Act 1994;
      - (f) the Nursing and Midwifery Order 2001;
      - (g) the Health Professions Order 2001;

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- (h) the Pharmacy Order 2010 and the Pharmacy (Northern Ireland) Order 1976;
  - (i) an Order in Council under this section.”;
  - (d) after subsection (2) insert—
    - “(2ZZA) For the purposes of subsection (1)(b) the reference to a profession is to be treated as including any group of workers, whether or not they are generally regarded as a profession (and references in this Part to a profession are to be read accordingly).”;
  - (e) in subsection (2ZB), for “and (bd)” substitute “, (bd) and (be)”.
- (3) In section 62 (regulations and orders), after subsection (10) insert—
- “(10A) If any provision made by an Order in Council by virtue of section 60(2ZZA) would, if it were included in an Act of Senedd Cymru, be within the legislative competence of the Senedd and is not merely incidental to, or consequential on, provision that (if so included) would be outside that competence, no recommendation is to be made to Her Majesty to make the Order unless the Welsh Ministers have consented to that provision.”
- (4) In Schedule 3 (power to make provision about regulation of health care and associated professions: supplementary)—
- (a) after paragraph 1B insert—

*“Power to abolish regulatory bodies*

1C An Order may abolish a regulatory body if (and only if) the professions regulated by the body or social care workers in England regulated by it—

- (a) will continue to be regulated by one or more other regulatory bodies, or
  - (b) are deregulated by provision made under section 60(1)(bza).”;
- (b) in paragraph 7 (matters outside scope of the Orders), omit sub-paragraphs (1) and (1A);
  - (c) in paragraph 8 (restrictions on provision authorising regulatory body’s functions to be exercised by others)—
    - (i) in sub-paragraphs (1), (2ZA) and (2A), for the words from “other than” to the end substitute “to exercise that function other than—
      - (a) a regulatory body for—
        - (i) a profession to which section 60(2) applies, or
        - (ii) social care workers in England, or
      - (b) the committees or officers of such a body.”;
    - (ii) omit sub-paragraph (2B).

*Medical examiners*

**169 Medical examiners**

- (1) After section 18 of the Coroners and Justice Act 2009 insert—

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### **“18A Medical examiners: England**

- (1) An English NHS body may appoint persons as medical examiners to discharge in England the functions conferred on medical examiners by or under this Chapter.
- (2) The Secretary of State must take such steps as the Secretary of State considers appropriate for the purpose of ensuring—
  - (a) that enough medical examiners are appointed under subsection (1) to enable those functions to be discharged in England,
  - (b) that the funds and other resources that are made available to such medical examiners are enough to enable those functions to be discharged in England, and
  - (c) that the performance of such medical examiners is monitored by reference to any standards or levels of performance that they are expected to attain.
- (3) For the purposes of discharging the duty in subsection (2), the Secretary of State may give a direction to an English NHS body—
  - (a) requiring the body to appoint or arrange for the appointment of one or more medical examiners,
  - (b) about the funds or other resources to be made available to a medical examiner employed by an English NHS body,
  - (c) about the steps to be taken by the body to monitor the performance of such a medical examiner, or
  - (d) about the steps to be taken by the body to monitor the performance of functions by an English NHS body in relation to such a medical examiner.
- (4) In this section “English NHS body” means—
  - (a) NHS England,
  - (b) an integrated care board established under section 14Z25 of the National Health Service Act 2006,
  - (c) a National Health Service trust established under section 25 of that Act,
  - (d) a Special Health Authority established under section 28 of that Act, or
  - (e) an NHS foundation trust within the meaning of section 30 of that Act.

### **18B Medical examiners: Wales**

- (1) A Welsh NHS body may appoint persons as medical examiners to discharge in Wales the functions conferred on medical examiners by or under this Chapter.
- (2) The Welsh Ministers must take such steps as the Welsh Ministers consider appropriate for the purpose of ensuring—
  - (a) that enough medical examiners are appointed under subsection (1) to enable those functions to be discharged in Wales,
  - (b) that the funds and other resources that are made available to such medical examiners are enough to enable those functions to be discharged in Wales, and

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- (c) that the performance of such medical examiners is monitored by reference to any standards or levels of performance that they are expected to attain.
- (3) In this section “Welsh NHS body” means—
  - (a) a Local Health Board,
  - (b) a National Health Service trust established under section 18 of the National Health Service (Wales) Act 2006, or
  - (c) a Special Health Authority established under section 22 of that Act.”
- (2) In section 19 of that Act (medical examiners)—
  - (a) in the heading, after “examiners” insert “: supplementary”;
  - (b) omit subsections (1) and (2);
  - (c) in subsection (5)—
    - (i) after “Nothing in” insert “section 18A or 18B or”;
    - (ii) for “a local authority or a Local Health Board” substitute “an English NHS body (as defined by section 18A) or a Welsh NHS body (as defined by section 18B)”.
- (3) In section 20 of that Act (medical certificate of cause of death), in subsection (5), for “a local authority or Local Health Board” substitute “an English NHS body (as defined by section 18A) or a Welsh NHS body (as defined by section 18B)”.
- (4) In section 48 of that Act (interpretation: general), in subsection (1), in the definition of “medical examiner”, for “section 19” substitute “section 18A or 18B”.
- (5) In section 41 of the Births and Deaths Registration Act 1953 (interpretation), in subsection (1), in the definition of “medical examiner”, for “means a person appointed under section 19” substitute “has the meaning given by section 48(1)”.
- (6) In the Health and Social Care Act 2012 omit section 54 (which inserted references to local authorities into sections 19 and 20 of the Coroners and Justice Act 2009).

### *Organ trafficking*

## **170 Commercial dealings in organs for transplantation: extra-territorial offences**

- (1) After section 32 of the Human Tissue Act 2004 insert—

### **“32A Offences under section 32 committed outside UK**

- (1) If—
- (a) a person who is habitually resident in England and Wales, or who is a UK national and not habitually resident in Northern Ireland, does an act outside the United Kingdom,
  - (b) the act, if done in England and Wales, would constitute an offence under section 32(1), and
  - (c) the controlled material to which the act relates is controlled material consisting of or including a human organ,
- the person is guilty in England and Wales of that offence.
- (2) In this section “United Kingdom national” means an individual who is—

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- (a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen,
- (b) a person who under the British Nationality Act 1981 is a British subject, or
- (c) a British protected person within the meaning of that Act.”

(2) After section 20 of the Human Tissue (Scotland) Act 2006 insert—

**“20A Offences under section 20 committed outside UK**

- (1) If—
  - (a) a person who is habitually resident in Scotland, or who is a UK national and not habitually resident in Northern Ireland, does an act outside the United Kingdom, and
  - (b) the act, if done in Scotland, would constitute an offence under section 20(1), and
  - (c) the part of the human body to which the act relates consists of or includes a human organ,the person is guilty in Scotland of that offence.
- (2) In this section “United Kingdom national” means an individual who is—
  - (a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen,
  - (b) a person who under the British Nationality Act 1981 is a British subject, or
  - (c) a British protected person within the meaning of that Act.
- (3) Where a person outside the United Kingdom commits an offence under section 20(1) the person may be prosecuted, tried and punished for the offence—
  - (a) in a sheriff court district in which the person is apprehended or in custody, or
  - (b) in a sheriff court district determined by the Lord Advocate,as if the offence had been committed in that district.
- (4) Where subsection (3) applies, the offence is, for all purposes incidental to or consequential on the trial and punishment, deemed to have been committed in that district.
- (5) In this section “sheriff court district” is to be construed in accordance with section 307(1) of the Criminal Procedure (Scotland) Act 1995 (interpretation).”

*Human fertilisation and embryology*

**171 Storage of gametes and embryos**

Schedule 17—

- (a) contains amendments to the Human Fertilisation and Embryology Act 1990 which make provision relating to the storage of gametes and embryos, and
- (b) makes transitional provision in relation to those amendments.

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*Status: This is the original version (as it was originally enacted).*

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### *Food and drink*

#### **172 Advertising of less healthy food and drink**

Schedule 18 amends the Communications Act 2003 to restrict the advertising of certain food and drink products.

#### **173 Hospital food standards**

In section 20 of the Health and Social Care Act 2008 (regulation of regulated activities)

- (a) in subsection (3), after paragraph (d), insert—
- “(da) impose requirements in connection with food or drink provided or made available to any person on hospital premises in England that are used in connection with the carrying on of a regulated activity;”;
- (b) after subsection (4A) insert—
- “(4B) Regulations made under this section by virtue of subsection (3)(da) may in particular—
- (a) specify nutritional standards, or other nutritional requirements, which are to be complied with;
- (b) require that specified descriptions of food or drink are not to be provided or made available.”
- (c) after subsection (5B) insert—
- “(5C) In subsection (3)(da) “hospital” has the meaning given by section 275 of the National Health Service Act 2006.”

#### **174 Food information for consumers: power to amend retained EU law**

- (1) In section 16 of the Food Safety Act 1990 (regulations about food labelling etc), after subsection (3) insert—
- “(3A) Regulations under subsection (1)(e) may amend [Regulation \(EU\) No 1169/2011](#) of the European Parliament and of the Council on the provision of food information to consumers.
- (3B) The inclusion in that Regulation of savings in respect of the power to make regulations under this Act of a particular kind is not to be taken as in any way limiting the generality of the provision that may be made by virtue of subsections (1)(e) and (3A).”
- (2) In section 48 (regulations and orders)—
- (a) in subsection (3), after “shall” insert “, unless the instrument contains regulations which include provision made by virtue of section 16(3A),”;
- (b) after subsection (3) insert—
- “(3A) A statutory instrument containing regulations which include provision made by virtue of section 16(3A) may not be made by the Secretary of State unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

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- (3B) A statutory instrument containing regulations which include provision made by virtue of section 16(3A) may not be made by the Welsh Ministers unless a draft of the instrument has been laid before and approved by a resolution of Senedd Cymru.
- (3C) Regulations made by the Scottish Ministers which include provision made by virtue of section 16(3A) are subject to the affirmative procedure (see Part 2 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10)).”

### *Fluoridation of water supplies*

## **175 Fluoridation of water supplies**

- (1) The Water Industry Act 1991, as amended by the Health and Social Care Act 2012, is amended in accordance with subsections (2) to (7).
- (2) In section 87 (fluoridation of water supplies at request of relevant authorities)—
- (a) omit subsection (3A);
  - (b) in subsection (4), in paragraph (a), for the words from “as the Secretary of State” to the end of that paragraph substitute “in England as the Secretary of State may determine”;
  - (c) in subsection (6), at the beginning insert “Subject to subsection (6A)”;
  - (d) after subsection (6) insert—

“(6A) The Secretary of State may by regulations provide that, in circumstances specified in the regulations, subsection (6)(a) is not to apply in relation to arrangements entered into by the Secretary of State.

(6B) The Secretary of State may by regulations require a public body specified in the regulations to make payments to the Secretary of State to meet any costs incurred by the Secretary of State under the terms of the arrangements.”;
  - (e) omit subsections (7A) and (7B);
  - (f) after subsection (7F) insert—

“(7G) Before making regulations under subsection (6A) or (6B) the Secretary of State must consult such persons as the Secretary of State considers appropriate.”;
  - (g) in subsection (11), for “the Welsh Ministers” substitute “a relevant authority”;
  - (h) after subsection (11) insert—

“(12) A statutory instrument containing regulations under subsection (6A) is not to be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.”
- (3) In section 87A (target concentration of fluoride), omit subsection (3A).
- (4) Omit sections 88B to 88O (procedural requirements in connection with fluoridation of water supplies).
- (5) In section 89 (consultation)—

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- (a) in the heading, omit “: Wales”;
  - (b) in subsection (1)—
    - (i) in the words before paragraph (a), for “the Welsh Ministers” substitute “a relevant authority”;
    - (ii) in paragraphs (a) and (b), for “the Welsh Ministers” substitute “that authority”;
  - (c) in subsection (3), in paragraph (a), for “the Welsh Ministers are” substitute “the relevant authority is”;
  - (d) in subsection (4)—
    - (i) for “the Welsh Ministers”, in the first place it occurs, substitute “a relevant authority”;
    - (ii) for “the Welsh Ministers so direct” substitute “that authority so directs”.
- (6) In section 90A (review of fluoridation), omit subsection (5A).
- (7) In section 213 (power to make regulations), in subsection (1), after “36A” insert “, 87(6A)”.
- (8) In consequence of the amendments made by this section, omit section 36 of the Health and Social Care Act 2012.
- (9) The reference in section 213(1A) of the Water Industry Act 1991 to the first exercise of the power to make regulations under section 89 is to be read as a reference to the first exercise of the power to make regulations under that section as amended by subsection (5).

## **176 Fluoridation of water supplies: transitional provision**

- (1) The Water Industry Act 1991 is amended in accordance with subsections (2) and (3).
- (2) After section 90A insert—

### **“90B Old English fluoridation arrangements: transitional provision**

- (1) With effect from the day on which section 176 of the Health and Care Act 2022 comes into force, old English fluoridation arrangements are to be treated for the purposes of this Chapter as if they were arrangements entered into by the water undertaker with the Secretary of State under section 87(1).
- (2) The Secretary of State may request such modifications to the arrangements as the Secretary of State considers necessary in order to give effect to subsection (1) (for example to insert the terms mentioned in section 87(6)).
- (3) If the Secretary of State and the water undertaker fail to agree the modifications requested by the Secretary of State—
  - (a) subsection (2) or, as the case may be, (4) of section 87B is to apply as if the parties had failed to agree the terms of the arrangements under section 87(1), and
  - (b) following determination of the modifications—
    - (i) the Secretary of State is to give notice of the determination to the water undertaker, and



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- (ii) the arrangements are deemed to have been modified as so determined with effect from the day after the date of notice.
- (4) Sections 87(11) and 89(1) (which relate to consultation) do not apply to the deemed entry into, and modification of, arrangements by virtue of this section.
- (5) References in this Chapter to arrangements entered into under section 87(1) include arrangements entered into by a water undertaker by virtue of subsection (1).
- (6) In this section “old English fluoridation arrangements” means—
  - (a) any arrangements entered into by a water undertaker with a Strategic Health Authority under section 87(1) of the Water Industry Act 1991 (before section 87(3) was amended by section 35(2) of the Health and Social Care Act 2012 in relation to England), and
  - (b) any arrangements which were treated as arrangements falling within paragraph (a) by virtue of section 91 (as that section had effect immediately before the commencement of section 37(4) of the Health and Social Care Act 2012).”
- (3) In section 91—
  - (a) for the heading substitute “Old Welsh fluoridation arrangements: transitional provision”;
  - (b) in subsection (1)—
    - (i) for “relevant pre-1985 arrangements” substitute “old Welsh fluoridation arrangements”;
    - (ii) for “relevant authority” substitute “Welsh Ministers”;
  - (c) in subsection (2), for “relevant authority” substitute “Welsh Ministers”;
  - (d) in subsection (3)—
    - (i) for “relevant authority”, in both places it occurs, substitute “Welsh Ministers”;
    - (ii) in the words before paragraph (a), for “the authority” substitute “the Welsh Ministers”;
    - (iii) in paragraph (a), omit “(2).”;
  - (e) in subsection (6)—
    - (i) in the definition of “the appointed day”, after “force” insert “in relation to Wales”;
    - (ii) for the definition of “relevant pre-1985 arrangements” substitute—

““old Welsh fluoridation arrangements” means arrangements, other than arrangements mentioned in section 90B(6), in pursuance of which a scheme for increasing the fluoride content of water was being operated by a water undertaker by virtue of paragraph 1 of Schedule 7 to this Act immediately before the appointed day.”
- (4) In consequence of the amendments made by this section, omit section 37 of the Health and Social Care Act 2012.

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*Status: This is the original version (as it was originally enacted).*

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*Disputes about treatment of critically ill children*

**177 Review into disputes relating to treatment of critically ill children**

- (1) The Secretary of State must arrange for the carrying out of a review into the causes of disputes between (on the one hand) persons with parental responsibility for a critically ill child and (on the other) persons responsible for the provision of care or medical treatment for the child as part of the health service in England.
- (2) The Secretary of State must publish and lay before Parliament a report on the outcome of the review, within one year beginning with the date on which this section comes into force.
- (3) In this section—
  - “child” means a person aged under 18;
  - “health service in England” means the health service continued under section 1(1) of the National Health Service Act 2006;
  - “parental responsibility” has the meaning given by section 3 of the Children Act 1989.

*Termination of pregnancy*

**178 Early medical termination of pregnancy**

- (1) Section 1 of the Abortion Act 1967 is amended as follows.
- (2) In subsection (3), for “subsection” substitute “subsections (3B) to”.
- (3) In subsection (3A)—
  - (a) the words from “includes” to the end become paragraph (a);
  - (b) after that paragraph insert—
    - “(b) is not limited by subsections (3C) and (3D).”
- (4) After subsection (3A) insert—
  - “(3B) Subsections (3C) and (3D) apply where—
    - (a) the treatment referred to in subsection (3) consists of the prescription and administration of medicine, and
    - (b) the registered medical practitioner terminating the pregnancy is of the opinion, formed in good faith, that, if the medicine is administered in accordance with their instructions, the pregnancy will not exceed ten weeks at the time when the medicine is administered (or in the case of a course of medicine, when the first medicine in the course is administered).
  - (3C) If the usual place of residence of the registered medical practitioner terminating the pregnancy is in England or Wales, the medicine may be prescribed from that place by the registered medical practitioner.
  - (3D) If the pregnant woman’s usual place of residence is in England or Wales and she has had a consultation (in person, by telephone or by electronic means) with a registered medical practitioner, registered nurse or registered midwife

about the termination of the pregnancy, the medicine may be self-administered by the pregnant woman at that place.”

*Child safeguarding: information sharing*

**179 Child safeguarding etc in health and care: policy about information sharing**

- (1) The Secretary of State must publish and lay before Parliament a report describing the government’s policy in relation to the sharing of information by or with public authorities in the exercise of relevant functions of those authorities, for purposes relating to—
  - (a) children’s health or social care, or
  - (b) the safeguarding or promotion of the welfare of children.
- (2) In this section, “relevant functions” means functions relating to children’s health or social care, so far as exercisable in relation to England.
- (3) The report must include an explanation of whether or to what extent it is the government’s policy that a consistent identifier should be used for each child, to facilitate the sharing of information.
- (4) The report must include a summary of the Secretary of State’s views about implementation of the policy referred to in subsection (1), including any views about steps that should be taken to overcome barriers to implementation.
- (5) The report must be published and laid before Parliament within one year beginning with the date on which this section comes into force.
- (6) In this section “child” means a person aged under 18.

*Cosmetic procedures*

**180 Licensing of cosmetic procedures**

- (1) The Secretary of State may, for the purposes of reducing the risk of harm to the health or safety of members of the public, make regulations—
  - (a) prohibiting an individual in England from carrying out specified cosmetic procedures in the course of business, unless the person has a personal licence;
  - (b) prohibiting a person from using or permitting the use of premises in England for the carrying out of specified cosmetic procedures in the course of business, unless the person has a premises licence.
- (2) In this section—

“cosmetic procedure” means a procedure, other than a surgical or dental procedure, that is or may be carried out for cosmetic purposes; and the reference to a procedure includes—

  - (a) the injection of a substance;
  - (b) the application of a substance that is capable of penetrating into or through the epidermis;
  - (c) the insertion of needles into the skin;
  - (d) the placing of threads under the skin;
  - (e) the application of light, electricity, cold or heat;

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“licensed premises” means premises in respect of which a premises licence is in force;

“local authority” means—

- (a) a county council in England;
- (b) a district council in England;
- (c) a London borough council;
- (d) a combined authority established under section 103 of the Local Democracy, Economic Development and Construction Act 2009;
- (e) the Common Council of the City of London (in its capacity as a local authority), the Sub-Treasurer of the Inner Temple or the Under Treasurer of the Middle Temple;
- (f) the Council of the Isles of Scilly;

“personal licence” means a licence, granted by a specified local authority under the regulations, which authorises an individual to carry out a cosmetic procedure of a description specified in the licence;

“premises licence” means a licence, granted by a specified local authority under the regulations, which authorises premises to be used for the carrying out of a cosmetic procedure of a description specified in the licence;

“specified cosmetic procedure” means a cosmetic procedure of a description specified in the regulations;

“specified local authority” means a local authority of a description specified in the regulations.

- (3) The provision which may be made by regulations under this section by virtue of section 183(1)(a) includes—
  - (a) provision amending Schedule 5 to the Consumer Rights Act 2015 (investigatory powers);
  - (b) provision repealing, revoking or amending provision made by or under any local Act.
- (4) Before making regulations under this section, the Secretary of State must consult such persons as the Secretary of State considers appropriate.
- (5) Schedule 19 makes further provision about regulations under this section (including provision for the imposition of fees, the creation of criminal offences and financial penalties).

### *Disability and autism training*

## **181 Mandatory training on learning disability and autism**

- (1) The Health and Social Care Act 2008 is amended in accordance with subsections (2) to (6).
- (2) In section 20 (regulation of regulated activities), after subsection (5) insert—
  - “(5ZA) Regulations under this section must require service providers to ensure that each person working for the purpose of the regulated activities carried on by them receives training on learning disability and autism which is appropriate to the person’s role.”
- (3) After subsection (5C) (as inserted by section 173) insert—

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“(5D) In subsection (5ZA)—

“learning disability” has the meaning given by section 1(4) of the Mental Health Act 1983;

“service provider” means a person registered under this Chapter as a service provider in respect of a regulated activity.”

(4) After section 21 insert—

**“21A Learning disability and autism training: code of practice**

(1) The Secretary of State must issue a code of practice about compliance with requirements imposed by virtue of section 20(5ZA) (requirements relating to training on learning disability and autism).

(2) The code must make provision about—

- (a) the content of training;
- (b) training appropriate to different roles;
- (c) circumstances in which it is appropriate for training to be delivered in person;
- (d) the involvement of people with learning disability, autistic people, or their carers, in the provision of training;
- (e) accreditation of training;
- (f) procurement of training;
- (g) monitoring and evaluation of the impact of training;

(3) The code may make different provision for different cases or circumstances.

(4) The Secretary of State must, at least once every five years—

- (a) review the code, and
- (b) lay before Parliament a report setting out the findings of the review.”

(5) In section 22 (consultation in relation to code of practice under section 21)—

- (a) for the heading substitute “Codes of practice: consultation and Parliamentary scrutiny”;
- (b) in subsection (1), after “21” insert “or 21A”;
- (c) in subsection (2), after “21” insert “or 21A”;
- (d) in subsection (3), after “(2)” insert “in relation to a draft of a code or revised code under section 21”;
- (e) after subsection (5) insert—

“(5A) Where, following consultation under subsection (1) or (2) in relation to a draft of a code or revised code under section 21A, the Secretary of State decides to proceed with the draft (in its original form or with modifications), the Secretary of State must lay a copy of the draft before Parliament.

(5B) The Secretary of State may not issue the code or revised code if, within the 40-day period, either House of Parliament resolves not to approve it.

(5C) In this section “40-day period” means—

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- (a) the period of 40 days beginning with the day on which the draft is laid before Parliament, or
  - (b) if the draft is not laid before each House on the same day, the period of 40 days beginning with the later of the days on which it is laid before Parliament.
- (5D) For the purposes of subsection (5C), no account is to be taken of any whole days that fall within a period during which—
- (a) Parliament is dissolved or prorogued, or
  - (b) either House of Parliament is adjourned for more than four days.”
- (6) In section 25 (effect of code under section 21 and guidance under section 23)—
- (a) in the heading, after “s. 21” insert “or 21A”;
  - (b) in subsection (1), for “A code of practice under section 21” substitute “Codes of practice under sections 21 and 21A”;
  - (c) in subsection (2),
    - (i) for “A code of practice under section 21 or” substitute “Codes of practice under sections 21 and 21A and”;
    - (ii) for “is” substitute “are”;
  - (d) in subsection (3), after “21” insert “or 21A”.
- (7) Until the first regulations made by virtue of section 20(5ZA) of the Health and Social Care Act 2008 (as inserted by subsection (2)) come into force—
- (a) the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (S.I. 2014/2936) (“the 2014 regulations”), and
  - (b) the Health and Social Care Act 2008,
- are to be read as if regulation 18 of the 2014 regulations contained such requirements.

## PART 7

### GENERAL

#### **182 Power to make consequential provision**

- (1) The Secretary of State may by regulations make provision that is consequential on this Act.
- (2) Regulations under this section may amend, repeal or revoke provision made by this Act or any provision made by or under primary legislation passed—
  - (a) before this Act, or
  - (b) later in the same session of Parliament as this Act.
- (3) In this section “primary legislation” means—
  - (a) an Act,
  - (b) an Act or Measure of Senedd Cymru,
  - (c) an Act of the Scottish Parliament, or
  - (d) Northern Ireland legislation.

### **183 Regulations**

- (1) A power to make regulations under any provision of this Act includes power to make—
  - (a) consequential, supplementary, incidental, transitional or saving provision;
  - (b) different provision for different purposes.
- (2) A power to make regulations under section 92, 103 or 104 includes power to make different provision for England, Wales, Scotland or Northern Ireland.
- (3) Regulations under this Act are to be made by statutory instrument.
- (4) A statutory instrument containing any of the following (whether alone or with other provision) 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 20(4);
  - (b) regulations under section 92;
  - (c) regulations under section 103 or 104;
  - (d) regulations under section 123;
  - (e) regulations under section 180;
  - (f) regulations under section 182 that amend or repeal provision made by primary legislation (as defined by section 182(3)).
- (5) Any other statutory instrument containing regulations under section 182 is subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) This section does not apply to regulations under section 186.

### **184 Financial provision**

There is to be paid out of money provided by Parliament—

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

### **185 Extent**

- (1) This Act extends to England and Wales only, subject to subsections (2) to (5).
- (2) The following extend to England and Wales, Scotland and Northern Ireland—
  - (a) in Part 1, paragraph 1(3) and (4) of Schedule 1 (renaming of NHS Commissioning Board);
  - (b) in Part 2, sections 92 to 94 (information about payments etc to persons in the health care sector);
  - (c) Part 3 (Secretary of State’s powers to transfer or delegate functions);
  - (d) in Part 4, section 125 (restriction of statutory powers requiring disclosure);
  - (e) in Part 6, section 171 and Part 2 of Schedule 17 (storage of gametes and embryos);
  - (f) this Part.
- (3) The following extend to Scotland only—
  - (a) sections 140 to 143 (offences relating to virginity testing);

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- (b) sections 152 to 155 (offences relating to hymenoplasty).
- (4) The following extend to Northern Ireland only—
  - (a) sections 144 to 147 (offences relating to virginity testing);
  - (b) sections 156 to 159 (offences relating to hymenoplasty).
- (5) An amendment, repeal or revocation made by this Act has the same extent as the provision amended, repealed or revoked.

## **186 Commencement**

- (1) This Part comes into force on the day on which this Act is passed.
- (2) Section 161(2) comes into force on such day as the Welsh Ministers may by regulations appoint.
- (3) Section 171 and Schedule 17 (storage of gametes and embryos) come into force on 1 July 2022.
- (4) Section 172 and Schedule 18 (advertising of less healthy food and drink) come into force at the end of the period of two months beginning with the day on which this Act is passed.
- (5) Section 179 comes into force at the end of the period of three months beginning with the day on which this Act is passed.
- (6) Except as mentioned in subsections (1) to (5), this Act comes into force on such day as the Secretary of State may by regulations appoint.
- (7) Different days may be appointed under subsection (2) or (6) for different purposes.
- (8) In relation to section 166, different days may be appointed under subsection (6) for different areas.
- (9) The Secretary of State may by regulations make transitional or saving provision in connection with the coming into force of any provision of this Act.
- (10) The Welsh Ministers may by regulations make transitional or saving provision in connection with the coming into force of section 161(2).
- (11) The power to make regulations under subsection (9) or (10) includes power to make different provision for different purposes.
- (12) Regulations under this section are to be made by statutory instrument.

## **187 Short title**

This Act may be cited as the Health and Care Act 2022.