

Draft Order laid before Parliament under section 38(3) of the National Health Service Reform and Health Care Professions Act 2002 for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2006 No.

NATIONAL HEALTH SERVICE, ENGLAND AND WALES

The National Health Service (Pre- consolidation Amendments) Order 2006

Made - - - -

Coming into force in accordance with Art1(1)

The Secretary of State for Health, in exercise of the powers conferred by sections 36 and 38 of the National Health Service Reform and Health Care Professions Act 2002⁽¹⁾, makes the following Order.

In accordance with section 38(3) of the 2002 Act, a draft of this instrument was laid before, and approved by resolution of, each House of Parliament.

Citation, commencement, extent and application

1.—(1) This Order may be cited as the National Health Service (Pre-consolidation Amendments) Order 2006 and shall come into force (in accordance with section 36(3) of the National Health Service Reform and Health Care Professions Act 2002) immediately before the National Health Service Act 2006 comes into force.

(2) This Order extends to England and Wales only.

(3) Paragraphs 3, 11(a) and (c), 17, 18, 20, 21 and 31 of Part 1 of Schedule 1 to this Order apply in relation to England only.

Amendments of the legislation relating to the health service in England and Wales

2. The legislation relating to the health service in England and Wales is amended in accordance with Schedule 1.

(1) [2002 c.17](#).

Repeals and revocations of legislation relating to the health service in England and Wales

3. The enactments specified in column 1 of Schedule 2 are repealed or revoked to the extent specified in column 2.

Saving

4. Nothing in any repeal, revocation or amendment made by this Order affects the validity of any determination in relation to remuneration in respect of services under Part 2 of the National Health Service Act 1977.

National Assembly for Wales (Transfer of Functions) Order 1999

5. In Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999, any reference to an Act which is amended by this Order is a reference to that Act as amended by this Order, except in relation to the substitution by paragraph 15 of Part 1 of Schedule 1 to this Order of section 28I of the National Health Service Act 1977.

Signed by authority of the Secretary of State for Health

Date

Minister of State,
Department of Health

SCHEDULE 1

Article 2

Amendments of health service legislation

PART 1

Amendments to the National Health Service Act 1977

1. The National Health Service Act 1977 is amended as follows.
2. In section 3(1) (services generally)—
 - (a) in paragraph (d) after “other” insert “services and”,
 - (b) in paragraph (e) after “such” insert “other services and”, and
 - (c) in paragraph (f) after “services” insert “and facilities”.
3. In section 15 (duties in relation to family health services) in subsection (1)(a), for “for the provision of” substitute “(or, in relation to local pharmaceutical services, of the Health and Social Care Act 2001) for the provision of local pharmaceutical services,”.
4. In section 16(1) (exercise of functions by health authorities and special health authorities) omit “or a Health Authority”.
5. In section 16BC(1) (exercise of functions by Local Health Boards) for “section 16BB above or this section or sections 16CA to 16CC below” substitute “this Act (including this section) or any prescribed provision of any other Act”.
6. In section 16D (directions as to distribution of functions)—
 - (a) in subsection (1) omit “Health Authority or”, and
 - (b) in subsection (2) omit “or Health Authority”.
7. In section 17 (directions as to exercise of functions) omit subsection (2)(a).
8. In section 18(3)(b) (directions and regulations) omit “given by an instrument in writing”.
9. In section 21 (local social services authorities) after subsection (3) insert—

“(4) The reference in subsection (2) to bodies constituted under this Act includes a reference to NHS trusts and NHS foundation trusts.”.
10. Omit sections 23(4) and 27(5) (power to provide for modifications of the Vehicle Excise Registration Act 1994 and Part 6 of the Road Traffic Act 1988).
11. In section 26 (supply of goods and services)—
 - (a) for subsection (2)(c) substitute—

“(c) providing services under LPS arrangements or an LPS scheme,”,
 - (b) in subsection (3)(b) and (c) for “or Primary Care Trust” substitute “, Primary Care Trust or Local Health Board”,
 - (c) for subsection (4)(ab) substitute—

“(ab) persons performing services under LPS arrangements or an LPS scheme, and”, and
 - (d) in subsection (4)(b) for “or Primary Care Trusts” substitute “, Primary Care Trusts or Local Health Boards”.
12. In section 28A(2)(b) (power to make payments towards expenditure on community services) omit “section 8 of the Residential Homes Act 1980 or”.

13. In section 28D(2) (persons with whom agreements for the provision of primary medical or primary dental services may be made), in paragraph (b) of the definition of qualifying body, for “, in accordance with the provisions of Part 4 of the Dentists Act 1984, is entitled to carry on the business of dentistry” substitute “is carrying on the business of dentistry in accordance with the Dentists Act 1984”.

14. In section 28EE(2) (delegation of functions relating to section 28C arrangements) after “medical services” insert “or primary dental services”.

15. For section 28I (use of accommodation) substitute—

“**28I.**—(1) If the Secretary of State considers that any accommodation provided by him by virtue of this Act is suitable for use in connection with—

- (a) the provision of primary medical services or primary dental services under this Part, or
- (b) the provision of local pharmaceutical services,

he may make the accommodation available on such terms as he thinks fit to persons providing those services.

(2) If the National Assembly for Wales considers that any accommodation provided by it by virtue of this Act is suitable for use in connection with the provision of primary medical services or primary dental services under this Part, it may make the accommodation available on such terms as it thinks fit to persons providing those services.”.

16. In section 28M(4) (persons eligible to enter into GDS contracts) in the definition of dental corporation, for “, in accordance with the provisions of Part 4 of the Dentists Act 1984, is entitled to carry on the business of dentistry” substitute “is carrying on the business of dentistry in accordance with the Dentists Act 1984”.

17. In section 28X (persons performing primary medical and dental services)—

(a) after subsection (1) insert—

“(1A) Regulations may provide that a health care professional of a prescribed description may not perform any local pharmaceutical service for which a Primary Care Trust is responsible unless he is included in a list maintained under the regulations by a Primary Care Trust.”, and

(b) in subsection (3) after paragraph (b) add—

“(c) a Primary Care Trust is responsible for a local pharmaceutical service if it secures its provision by or under any enactment.”.

18. In section 28Y(1) (assistance and support) after paragraph (b) add—

“(c) any person providing local pharmaceutical services under LPS arrangements or an LPS scheme”.

19. For sections 43A and 43B (remuneration for services) substitute—

“Remuneration for Part 2 services

43A.—(1) The remuneration to be paid to persons who provide general ophthalmic services or pharmaceutical services under this Part shall be determined by determining authorities (and they may also determine the remuneration to be paid to persons providing those services in respect of the instruction of any person in matters relating to those services).

(2) For the purposes of this section and section 43B below determining authorities are—

- (a) the Secretary of State, and
 - (b) so far as authorised by him to exercise the functions of determining authorities, any Local Health Board, Primary Care Trust or other person appointed by him in an instrument (referred to in this section and section 43B below as an instrument of appointment).
- (3) An instrument of appointment—
- (a) may contain requirements with which a determining authority appointed by that instrument must comply in making determinations, and
 - (b) may be contained in regulations.
- (4) Subject to this section and section 43B below, regulations may make provision about determining remuneration under subsection (1) above and may in particular impose requirements with which determining authorities must comply in making, or in connection with, determinations (including requirements as to consultation and publication).
- (5) Regulations may provide—
- (a) that determinations may be made by reference to any of the following—
 - (i) rates or conditions of remuneration of any persons or any descriptions of persons which are fixed or determined, or to be fixed or determined, otherwise than by way of a determination under subsection (1) above,
 - (ii) scales, indices or other data of any description specified in the regulations,
 - (b) that any determination which in accordance with regulations made by virtue of paragraph (a)(ii) above falls to be made by reference to a scale or an index or to any other data may be made not only by reference to that scale or index or those data in the form current at the time of the determination but also by reference to the scale, index or data in any subsequent form attributable to amendment or revision taking effect after that time or to any other cause.
- (6) Regulations may—
- (a) provide that determining authorities may make determinations which have effect in relation to remuneration in respect of a period beginning on or after a date specified in the determination, which may be the date of the determination or an earlier or later date, but may be an earlier date only if, taking the determination as a whole, it is not detrimental to the persons to whose remuneration it relates,
 - (b) provide that any determination which does not specify such a date shall have effect in relation to remuneration in respect of a period beginning—
 - (i) if it is required to be published, on the date of publication,
 - (ii) if it is not so required, on the date on which it is made.
- (7) A reference in this section or section 43B below to a determination is to a determination of remuneration under subsection (1) of this section.

Part 2 remuneration: supplementary

43B.—(1) Before a determination is made by the Secretary of State which relates to all persons who provide services of, or of a category falling within, one of the descriptions of services mentioned in section 43A(1) above, he—

- (a) shall consult a body appearing to him to be representative of persons to whose remuneration the determination would relate, and
- (b) may consult such other persons as he considers appropriate.