

HEALTH ACT 1999

EXPLANATORY NOTES

OUTLINE OF THE EXISTING LAW

Part I system: hospital and community health services

25. The system provided for under Part I of the 1977 Act is the system under which all of the NHS, apart from family health services, is provided. The core duty to ensure the provision of a health service is laid upon the Secretary of State (section 1) in extremely broad terms, and is supplemented by the provisions of the subsequent sections.
26. [Section 2](#) confers wide-ranging powers for the Secretary of State to provide such services as are appropriate to, and to do any other thing whatsoever which is calculated to facilitate, or is conducive or incidental to, the discharge of any duty imposed on him by the Act. Section 3 sets out those general services which it is the Secretary of State's duty to provide to such extent as he considers necessary to meet all reasonable requirements. Most of the services that may be described as hospital and community health services are included under this section. Section 4 imposes a specific duty on the Secretary of State to provide special hospitals for persons detained under the Mental Health Act 1983 who have dangerous, violent or criminal propensities. The services provided under this section are often referred to as "high security psychiatric services" and are presently managed outside the normal hospital system by Special Health Authorities established under section 11 of the 1977 Act. Further miscellaneous powers and duties are imposed on the Secretary of State by section 5.
27. Part I of the 1977 Act (as amended by the 1995 Act) goes on to provide for the setting up of statutory bodies known as Health Authorities (section 8) and Special Health Authorities (section 11). Health Authorities are established to act for the area set out in their establishment order and together cover all of England and Wales. Special Health Authorities are established for specific functional purposes which the Secretary of State directs them to perform on his behalf (e.g. the National Blood Authority).
28. Although the main functions under Part I of the 1977 Act are conferred on the Secretary of State, the Act provides a mechanism which enables the Secretary of State to devolve to Health Authorities the responsibility for performing these functions, whilst retaining the ability to control how those functions are performed. The Secretary of State may direct a Health Authority or Special Health Authority to exercise his functions on his behalf (section 13). He may also give directions about the exercise of functions by a Health Authority or Special Health Authority (section 17). The Secretary of State has exercised his powers under these sections on many occasions but the principal instrument is the [National Health Service \(Functions of Health Authorities and Administration Arrangements\) Regulations 1996 \(S.I. 1996/708\)](#). Schedule 1 to those Regulations lists those "specified health service functions" of the Secretary of State that he has delegated to Health Authorities. The Secretary of State has directed Health Authorities to exercise most of his functions under Part I, in particular sections 2, 3, and 5. It is these Regulations by which Health Authorities have their functions in respect of Part I services conferred upon them. There is very little further prescription in primary legislation as to what the Secretary of State must do or how he must do it in relation to the provision of Part I services.

29. Health Authorities and Special Health Authorities are funded under the provisions of section 97 of the 1977 Act, as substituted by paragraph 47 of Schedule 1 to the 1995 Act and amended by section 36 of the Primary Care Act. Health Authorities are paid money in each year under section 97(1) and section 97(3). Section 97(1) concerns the remuneration of persons providing Part II services and is dealt with below. Section 97(3) concerns Part I expenditure and administrative costs. Under section 97(3) a Health Authority is paid money not exceeding the amount allotted to it by the Secretary of State. This amount is allotted towards meeting its “main expenditure” which includes all expenditure attributable to the performance of its Part I functions, all its administrative costs, and certain other expenditure. The money paid in respect of Part I services is therefore cash-limited. To enforce the cash-limits set by the Secretary of State, Health Authorities have various financial duties imposed upon them by section 97A of the 1977 Act (as substituted by paragraph 48 of Schedule 1 to the 1995 Act and amended by paragraph 23 of Schedule 2 to the Primary Care Act).