

# HEALTH ACT 1999

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### Part III – Miscellaneous and Supplementary

##### *Schedule 3*

341. *Paragraph 1* of the Schedule gives examples of the matters for which provision may be made by Order. Orders may make changes to any aspect of professional regulation, subject to the limitations in paragraphs 7 and 8.
342. *Paragraph 2(2)* prevents the amendment by Order of the Medicines Act 1968, except in respect of sections 80 to 83 and such other associated amendments to Part IV of the 1968 Act. This makes clear that an Order may amend those limited parts of the Medicines Act which deal with the professional regulation of retail pharmacy businesses.
343. *Paragraph 5* will enable functions to be conferred on Ministers of the Crown, Scottish Ministers or the National Assembly for Wales. An Order could be made, for example, enabling a Minister to pay grants to a body, or setting up bodies for different parts of the United Kingdom to deal with matters in connection with professional regulation. Any conferment of functions would be subject to paragraph 8.
344. *Paragraph 7(1)* makes it clear that an existing regulatory body, or, where there is more than one, the main one, of the health care professions referred to in subsection (2)(a) of section 60, may not be abolished by an Order. This will also apply to the bodies established to succeed the Council for Professions Supplementary to Medicine and the United Kingdom Central Council for Nursing, Midwifery and Health Visiting, and new regulatory bodies created by Order under section 60(1)(b). Paragraph 7(2) ensures that an Order may not impose a lay majority on the membership of a statutory regulatory body. Paragraph 7(3) provides that functions conferred on the Privy Council in respect of the professions to which section 60(2)(a) applies may not be transferred to another person or body.
345. *Paragraph 8* provides that, where legislation provides for certain specified functions to be exercised by a regulatory body, or any of its committees or officers, an Order may not transfer those functions from that regulatory body. Those functions are: the keeping of the register; the setting of standards of education for entry to the profession; provision of guidance on standards of conduct and performance expected of the profession; and the administration of procedures relating to fitness to practice. Paragraph 8(3) is a transitional measure which ensures that the functions listed in paragraph 8(2) may be transferred from the CPSM and UKCC, when they are abolished by the repeal of the 1960 Act and the 1997 Act, to their successor bodies.
346. It is proposed that the 1960 Act, when repealed, will be replaced by an Order setting up a health professions council with powers to recommend the bringing of further professional groups within the council's remit and provide for such matters as their registration, disciplinary and health procedures, protection of common title and the linkage of remaining on the register with the demonstration of continued competence.

347. Some health care professions not currently regulated by statute may not wish to be regulated by a new health professions council. For example, part of a profession might not provide health care services to patients. In such cases free-standing regulatory schemes can be provided for by Order including the responsibilities referred to in paragraph 1 of the Schedule.
348. *Paragraph 9* provides that before an Order can be made the Secretary of State must consult persons representing the relevant professions, patient interest groups and other persons or bodies that he considers it appropriate to consult. The consultation will be on the basis of the draft. He must publish the proposed Order in draft three months before it is laid before Parliament. Following consultation a draft Order will be laid before Parliament (as originally drafted or with appropriate amendments) and must be accompanied by a report about the consultation. Draft Orders will be subject to parliamentary scrutiny under affirmative procedures (see section 62(9)).
349. Regulation of those health professions currently regulated by Act of Parliament is a matter reserved to the UK Parliament under the Scotland Act 1998 (see Schedule 5 to the Scotland Act at Head G section G2). The regulation of any other health profession, however, is not a reserved matter. An Order could be made under section 30 of the Scotland Act to provide for the reservation of other professions. If such an Order were not made, regulation of those professions would be within the legislative competence of the Scottish Parliament. Paragraph 9(3) sets out the procedures which will apply where a draft Order deals with matters within the legislative competence of the Scottish Parliament. In particular, the draft Order, together with the report on the consultation, must be laid before the Scottish Parliament as well as the UK Parliament. It must be approved by resolution of the Scottish Parliament (under section 62(10)), as well as each House of the UK Parliament, before the Secretary of State can recommend to Her Majesty that the Order be made for the United Kingdom.
350. *Paragraph 11* clarifies whether certain matters are within the scope of an Order under section 60. Paragraph 12(1) recognises that the regulation of the Pharmacy profession in Northern Ireland is already covered by separate legislation for [Northern Ireland \(Pharmacy \(Northern Ireland\) Order 1976 \(SI 1976/1213 \(N.I. 22\)\)\)](#). An Order will not be able to change this legislation. Orders may, however, be made on a UK-wide basis to regulate certain aspects of retail pharmacy business relating to misconduct and offences, but paragraph 12(2) ensures that the body responsible for such regulation in Northern Ireland may not be changed by Order.