

# HEALTH ACT 2006

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## EXPLANATORY NOTES

### OVERVIEW OF THE STRUCTURE OF THE ACT

5. The Act is in 7 parts:

#### Part 1

6. [Chapter 1](#) of Part 1 of the Act makes provision for enclosed and substantially enclosed public places and shared workplaces to be smoke-free. This follows the publication of the White Paper, *Choosing Health: Making healthy choices easier*<sup>1</sup> in November 2004 which set out the Government's proposals to shift the balance significantly in favour of smoke-free environments. The Act will also give the appropriate national authority (Secretary of State in the case of England and the National Assembly for Wales in the case of Wales) powers to make regulations to exempt premises or parts of premises from smoke-free legislation, although, in general, no exemptions can be made for premises operating under a premises licence or club premises certificate (as specified in the Licensing Act 2003). The Act also provides powers for the appropriate national authority to make regulations to specify additional places as smoke-free and to require specified types of vehicles to be smoke-free.
7. [Chapter 2](#) of Part 1 of the Act provides power for the Secretary of State to change the minimum age of sale of tobacco products through secondary legislation. The Act provides that the age specified under such secondary legislation may not be lower than 16 years or higher than 18 years.
8. This part of the Act extends to England and Wales. The Act also amends the Merchant Shipping Act 1995 to include provisions for smoke-free ships. The Merchant Shipping Act extends throughout the United Kingdom and so do the amendments.

#### Part 2

9. [Part 2](#) of the Act introduces new provisions which are concerned with the prevention and control of health care associated infections. The Act gives the Secretary of State the power to issue a code of practice containing a range of actions to reduce the levels of health care associated infections in connection with health care that is provided or commissioned by the NHS. The NHS bodies to which the code applies, which may include any English NHS body (except Strategic Health Authorities) and any cross-border Special Health Authority ("cross-border SHA"), must observe the code in discharging their duty of quality in health care under the Health and Social Care (Community Health and Standards) Act 2003 ("the 2003 Act").
10. The Act also places duties on the Commission for Healthcare Audit and Inspection ("the CHAI"), which is referred to in these notes as "the Healthcare Commission", to consider observance of the code when it carries out reviews and investigations of health care under Chapter 3 of Part 2 of the 2003 Act. Where the code is not being observed, the provisions in the Act give the Healthcare Commission the power to serve an

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<sup>1</sup> [http://www.dh.gov.uk/PublicationsAndStatistics/Publications/PublicationsPolicyAndGuidance/PublicationsPolicyAndGuidanceArticle/fs/en?CONTENT\\_ID=4094550&chk=aN5Cor](http://www.dh.gov.uk/PublicationsAndStatistics/Publications/PublicationsPolicyAndGuidance/PublicationsPolicyAndGuidanceArticle/fs/en?CONTENT_ID=4094550&chk=aN5Cor)

improvement notice, and place a duty on the Commission to report significant failings to the Secretary of State or the regulator of NHS foundation trusts (“the regulator”) with a view to remedying the situation.

11. This Part of the Act extends to England and Wales.

### **Part 3**

12. **Part 3** of the Act has two chapters:
13. **Chapter 1** responds to recommendations in the Fourth Report of the Shipman Inquiry<sup>2</sup>. It would enable a duty to be imposed on specified organisations in the health sector to appoint an accountable officer to ensure the safe use of controlled drugs within the organisation’s sphere of responsibility. It also enables a duty to be imposed on specified organisations concerned with controlled drugs issues in the health sector to share information about controlled drug use by health and social care professionals and to agree joint action as needed. The provisions also create a right of entry and inspection into premises used in connection with the provision of health care or the supply or administration of controlled drugs.
14. This part of the Act extends to the whole of the United Kingdom.
15. **Chapter 2** provides for the amendment of provisions of the Medicines Act 1968, and the Health Act 1999, relating to pharmacies, pharmacists and the sale and supply of medicines. In particular, it includes changes to the requirement in the Medicines Act 1968 for a pharmacist to be in personal control of the retail sale and supply of medicines at each retail pharmacy, and changes to the provisions of the Medicines Act relating to supervision by pharmacists of the preparation, dispensing, sale and supply of medicines. This part of the Health Act extends to the whole of the United Kingdom.

### **Part 4**

16. **Part 4** of the Act has four chapters:
17. **Chapter 1** makes changes to the National Health Service Act 1977 (“the 1977 Act”) to enable charges to be levied on applications to provide NHS pharmaceutical services and to introduce a new criterion for determining competing applications from chemists in respect of the same neighbourhood. The changes form part of the Government’s response for England to recommendations made in The Office of Fair Trading (OFT) report: *The control of entry regulations and retail pharmacy services in the UK* published on 17 January 2003. This is available at <http://www.offt.gov.uk/business/market+studies/pharmacies.htm>. The National Assembly for Wales has separately decided to introduce the same changes in Wales.
18. The Chapter provides that, in England, charges may be determined either by the Secretary of State or by Primary Care Trusts (PCTs) under directions from the Secretary of State. In the case of Wales, the charges may be determined by the National Assembly for Wales or by Local Health Boards (LHBs) under directions from the Assembly. The Chapter also makes changes to enable PCTs, or LHBs as appropriate, to consider in their assessment of competing applications from pharmacists to provide NHS services what improvements such applications would bring to local provision of, or access to, over-the counter medicines and other healthcare products and advice related to such provision. This new criterion will only come into play where certain conditions are met. These conditions are described in more detail in the commentary on sections below. The Chapter also makes changes in relation to the current requirement that a person who enters arrangements to provide pharmaceutical services must undertake that medicines are dispensed by, or under the supervision of a pharmacist. This part of the Act extends

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<sup>2</sup> See <http://www.the-shipman-inquiry.org.uk/>. Government’s response to the fourth report at [http://www.dh.gov.uk/PublicationsAndStatistics/Publications/PublicationsPolicyAndGuidance/PublicationsPolicyAndGuidanceArticle/fs/en?CONTENT\\_ID=4097904&chk=isA3Eo](http://www.dh.gov.uk/PublicationsAndStatistics/Publications/PublicationsPolicyAndGuidance/PublicationsPolicyAndGuidanceArticle/fs/en?CONTENT_ID=4097904&chk=isA3Eo)

to England and Wales and also, as respects certain arrangements relating to dispensing medicines, to Scotland.

19. **Chapter 2** makes changes to the 1977 Act which will remove current restrictions on who PCTs may contract with to provide general ophthalmic services. The changes will create a legal framework which is closer to that which applies to "high street" medical and dental services. This Chapter also include provisions which are intended to strengthen the protection of public funds through improved controls over who may redeem optical vouchers. The provisions in this Chapter extend to England and Wales. They apply in England only.
20. **Chapter 3** provides for a power to require the production of documents in connection with the appropriate national authority's NHS counter fraud functions and the Secretary of State's security management functions. This will give NHS counter fraud organisations powers comparable to those of other regulators and auditing organisations. This measure is in response to the Department of Health consultation document entitled, *Access to Relevant Documents, Records and Data to Counter NHS Fraud: A Paper for Consultation*, launched in October 2004<sup>3</sup>. The response to the consultation was published on 27 May 2005. The provisions extend to England and Wales.
21. **Chapter 4** makes provision for the auditing of the accounts of certain NHS bodies in England and Wales.

## **Part 5**

22. **Part 5** of the Act contains provisions for replacing the NHS Appointments Commission with a new organisation called the Appointments Commission. This is in line with the Government's response to the Public Administration Select Committee (June 2003)<sup>4</sup>, which indicated that some Departments could benefit from using the services of the NHS Appointments Commission to support their sponsor teams in making appointments but that statutory authority would be needed to achieve this. The Act will establish the Appointments Commission as a Non-Departmental Public Body and give it powers to exercise, if directed to do so, the appointment functions of the Secretary of State and the Privy Council in relation to the appointment of chairmen and non-executive members to NHS and other health and social care bodies and health professional regulatory bodies and also certain appointment powers of the National Assembly for Wales. The Appointments Commission may also assist, if requested to do so, the Boards of NHS foundation trusts with their similar powers of appointment and also assist, if requested to do so, English Ministers with their similar powers of appointment to other public bodies.

## **Part 6**

23. **Part 6** of the Act makes changes in four areas:
  - it amends the Care Standards Act 2000 to enable the Secretary of State for Health to direct a special health authority to administer the Social Care Student Bursary Scheme.
  - it amends the 2003 Act to allow for contributory negligence to be taken into account in a wider range of cases when the NHS recovers hospital treatment and/or ambulance costs where people receive compensation for injuries. The 2003 Act establishes the legal framework to allow the expansion of the current costs recovery scheme for road traffic accident cases (as set out in the Road Traffic (NHS Charges) Act 1999). This provision extends to England and Wales and also to Scotland by virtue of the provisions of section 84(4) of the Act.

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<sup>3</sup> see consultation document and summary of responses at: [http://www.dh.gov.uk/Consultations/ResponsesToConsultations/ResponsesToConsultationsDocumentSummary/fs/en?CONTENT\\_ID=4112148&chk=T68WA5](http://www.dh.gov.uk/Consultations/ResponsesToConsultations/ResponsesToConsultationsDocumentSummary/fs/en?CONTENT_ID=4112148&chk=T68WA5)

<sup>4</sup> <http://www.publications.parliament.uk/pa/cm200203/cmselect/cmpubadm/165/16502.htm>

*These notes refer to the Health Act 2006 (c.28) which received Royal Assent on 19 July 2006*

- it amends the 1977 Act, the National Health Service and Community Care Act 1990 (“the 1990 Act”) and the 2003 Act to give the Secretary of State for Health, or in the case of Wales, the National Assembly for Wales, the power to transfer criminal liabilities of NHS bodies on their dissolution or abolition to other specified NHS bodies.
- it gives the Secretary of State and the National Assembly for Wales power to make orders to deal with out-of-date references in legislation to Welsh health authorities.

## **Part 7**

24. **Part 7** of the Act deals with various matters of general application, including provisions relating to orders and regulations, interpretation, commencement and extent.