

HEALTH ACT 2006

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2

Prevention and Control of Health Care Associated Infections

Section 14: Code of practice relating to health care associated infections

70. This section inserts three new sections into Part 2 of the Health and Social Care (Community Health and Standards) Act 2003 (the “2003 Act”).
71. The first is new *section 47A* (code of practice relating to health care associated infections). This gives the Secretary of State the power to issue a code of practice (“the code”) on the prevention and control of health care associated infections. The code will set out the measures which he considers are an important part of best practice in reducing those infections which are related to health care that is provided by, or commissioned for, the NHS bodies to which the code applies.
72. Health care associated infections are defined in *subsection (8)*. A health care associated infection is any infection to which an individual may be exposed or made susceptible or more susceptible where the risk of exposure or susceptibility is directly or indirectly attributable to the provision of the health care. The individual who may be at risk does not have to be the individual receiving the health care.
73. “Health care” has the same meaning as in section 45(2) of the 2003 Act. It means services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness and the promotion and protection of public health.
74. The code may be applied to all English NHS bodies (other than Strategic Health Authorities) and to cross-border SHAs (*subsection (2)*). These bodies are defined in section 148 of the 2003 Act. English NHS bodies include an NHS trust all or most of whose hospitals, establishments and facilities are situated in England, an NHS foundation trust and a Primary Care Trust (“PCT”). The code may specify which of its provisions apply to which bodies, and it may do so by description or by naming them (*subsection (3)*).
75. *Subsection (4)(a)* makes it clear that the code may include measures designed to protect people who are not themselves receiving health care, but who may nonetheless be at risk from health care associated infections, such as staff and visitors. *Subsection (4)(b)* makes it clear that the code may place obligations on those NHS bodies to which the code applies in connection with the health care that they commission.
76. It is envisaged that the provisions of the code will need to operate by reference to the content of other documents, whether published by the Secretary of State or other relevant sources. *Subsection (5)* allows the code to incorporate other documents (in whole or part), and to take effect by reference to a document as revised from time to time. Where the code refers to a document in this way, the code will be automatically changed each time the document that it refers to is revised.

77. The code may make different provision for different cases or circumstances (*subsection (5)(c)*). This allows the code to reflect the fact that NHS bodies have different functions.
78. The Secretary of State must keep the code under review, and may revise all or any part of it (*subsection (7)*).
79. [Section 14](#) also inserts new section 47B (consultation etc.) into the 2003 Act.
80. *Subsections (1) and (2)* of the new section 47B provide that where the Secretary of State proposes to issue a code or to issue a revised code which he thinks would result in a substantial change in the code, he must prepare a draft of it and consult such persons as he thinks appropriate about the draft.
81. *Subsections (4) and (5)* are concerned with a situation where any provision of the code operates by reference to another document as revised from time to time. Before the Secretary of State revises any document published by him in relation to his health functions, he must consult appropriate persons about any change which would, in his view, lead to a substantial change in the code (*subsection (4)*). In the case of revisions to other such documents, where the Secretary of State thinks that the code has been substantially altered as a consequence, *subsection (5)* places a duty on him to consult appropriate persons about whether the code should be revised.
82. *Subsection (6)* allows consultation for the purposes of this section to have taken place before the commencement of the section.
83. Lastly, section 14 also inserts new section 47C (effect of code under section 47A) into the 2003 Act. It places a duty on those NHS bodies to which provisions of the code apply to observe them in discharging their duty of quality under section 45 of the 2003 Act (*subsection (1)*). Section 45 places a duty on each NHS body to ensure that appropriate arrangements are in place with a view to monitoring and improving the quality of health care that they provide or commission.
84. A failure to observe any provision of the code does not, of itself, make a person liable to criminal or civil proceedings, but the code is admissible in evidence in such proceedings, for example in a negligence action (*subsections (2) and (3)*).