

# HEALTH ACT 2006

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### PART 4 CHAPTER 1

#### Pharmaceutical Services

#### *Section 35: Applications for provision of pharmaceutical services*

170. *Section 35* amends the 1977 Act by inserting new subsections (2B) and (2C) into section 42. Subsection (2B) provides for regulations to be made authorising a PCT or, in Wales, the National Assembly for Wales to take account of any proposals contained in the application relating to the sale or supply of over the counter medicines and other healthcare products and advice related to the supply of such products. In practice, in Wales, this function will be delegated to Local Health Boards.
171. *Subsection (2B)* sets out the circumstances in which the sale or supply of over the counter medicines and other health care products and advice related thereto can be taken into account.
172. First, subsection (2B)(a) requires that there must be two or more applications for inclusion in a PCT's (or LHB's) pharmaceutical list. The applications may be from:
- a person not already included in the PCT's (or LHB's) pharmaceutical list;
  - or a person already included in the PCT's (or LHB's) pharmaceutical list in respect of pharmaceutical services or premises other than those listed in relation to him.
173. The applications must relate to the same neighbourhood as each other. Accordingly, the provision does not apply where a PCT (or LHB) receives and determines a single application alone, or two or more applications each relating to different neighbourhoods.
174. Secondly, those applications must be considered together by the PCT (or LHB) (subsection (2B) (b)).
175. Thirdly, the PCT (or LHB) must be satisfied that, if each application was considered separately, each would meet the "necessary or desirable test" (as described above). However, the PCT (or LHB) must also be satisfied that if all the applications were taken together, the necessary or desirable test would not be met (subsection (2B)(c)).
176. Where the conditions of subsection (2B) are met (and assuming the Secretary of State or the Assembly makes Regulations), *subsection (2C)* enables the PCT (or LHB) to take into account, in their assessment of which application or applications to grant, the proposals in such applications relating to the sale or supply of over-the-counter medicines or other healthcare products or advice related thereto (other than by way of NHS services or in accordance with a private prescription). Sale or supply of over-the-counter medicines are not usually pharmaceutical services since such products are not supplied as part of NHS pharmaceutical services (unless ordered as part of a NHS service – for example by means of a NHS prescription). Over-the-counter medicines do

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

not include the supply of medicines against a private prescription. Healthcare products are products and services for the diagnosis, prevention, monitoring or treatment of illness or handicap or for the promotion or protection of health.