

# HEALTH ACT 2006

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## EXPLANATORY NOTES

### LOCAL HEALTH BOARDS AND WELSH HEALTH AUTHORITIES

#### Part 7

#### Final Provisions

#### *Section 79: Orders and regulations*

324. *Section 79* provides that all regulation and order making powers will be subject to the appropriate negative resolution procedure, other than in the following cases:
- where subsection (4) applies, in which case the instrument must be approved by resolution of each House of Parliament;
  - where it is an instrument containing an order under section 80(4) which amends or repeals any provision of an Act or an Act of the Scottish Parliament, in which case a draft of the instrument must first be approved by resolution of the Scottish Parliament;
  - where it is a statutory rule containing regulations made by the Department of Health, Social Services and Public Safety under section 17 which amends or repeals any provision of an Act, in which case the rule is subject to affirmative resolution; or
  - where the order is a commencement order under section 83, in which case there is no Parliamentary procedure.
325. *Subsection (4)* lists those orders and regulations which will be subject to greater Parliamentary scrutiny than the negative resolution procedure provides for. The orders and regulations, which will be subject to the affirmative resolution procedure, are as follows:
- regulations to specify the exemptions to the requirement that premises be smoke-free (section 3), to designate additional smoke-free places (section 4), to provide for vehicles to be smoke-free (section 5), to specify the level of fine for the offences of failing to display no smoking signs (section 6(8)), of smoking in a smoke-free place (section 7(6)) and of failing, if controlling or concerned with the management of a smoke-free place, to stop a person from smoking there (section 8(7));
  - an order to amend the age of sale of tobacco products (section 13);
  - regulations to make provision for or in connection with accountable officers (controlled drugs) where such provision would have the effect of amending or repealing any provision of an Act or of an Act of the Scottish Parliament (section 17);
  - an order amending the provisions of section 45(2) to (6), which define the meanings of “NHS Body”, “health service provider”, “NHS contractor” and “statutory health body” for the purposes of the provisions relating to the protection of the NHS from

fraud etc, and making such consequential amendments to these “counter fraud” provisions as are considered appropriate (section 45(7));

- an order making amendments relating to Local Health Boards and the abolition of Welsh health authorities or an order making supplemental or other provision for the purposes of or in consequence of the Act, or to give full effect to it, where such provision would amend or repeal any provision of an Act or of an Act of the Scottish Parliament (section 75 and section 80(3));
- regulations specifying the level of financial penalty (and discount for early payment) payable under a fixed penalty notice issued for a smoking related offence (paragraph 5 or 8 of Schedule 1).