

HEALTH ACT 2006

EXPLANATORY NOTES

LOCAL HEALTH BOARDS AND WELSH HEALTH AUTHORITIES

Part 7

Final Provisions

Section 76: Offences by bodies corporate etc.

320. *Section 76* provides that if an offence under any provision of the Act is committed by a body corporate (e.g. a company), a partnership or some other unincorporated body, and it is proved that the offence was committed with the consent or connivance of an officer of the company, or of a partner in the case of the partnership, or of an officer or member of the unincorporated association, then that individual is guilty of the offence too. Proceedings can therefore be brought against that individual as well as against the company etc.
321. Such an individual is similarly liable if the offence is proved to be attributable to any neglect on their part.

Section 77: Offences committed by partnerships and other unincorporated associations

322. *Section 77* contains provisions regarding certain procedural matters where criminal proceedings are brought against partnerships or other unincorporated associations. First, *subsections (1) and (2)* provide that proceedings are to be brought against the partnership (and not individual partners) or, in the case of an unincorporated association, against the association (and not any of the individual members). However, *subsection (7)* makes it clear that these provisions do not prejudice the liability of such individuals under *section 76*. Secondly, *subsections (3) and (4)* provide that the rules of court applicable to a body corporate shall apply to a partnership or an unincorporated association. Thirdly, *subsections (5) and (6)* provide for fines to be paid out of partnership assets or the funds of the association.

Section 78: Penalties for offences: transitional modification for England and Wales

323. Certain offences under this Act may be punished, on summary conviction, by terms of imprisonment, up to given maximum periods. These are the maximum periods permitted under the provisions of the Criminal Justice Act 2003. *Section 78* provides that where the offence concerned was committed prior to the commencement of those provisions in the Criminal Justice Act 2003, the maximum possible period of imprisonment on summary conviction shall be the (shorter) maximum period that was previously possible.

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).

Section 80: Amendments, repeals and revocations

326. **Section 80** makes provision in respect of amendments, repeals and revocations.

Section 81: Expenses

327. **Section 81** makes provision for expenditure incurred under or attributable to the provisions of the Act to be paid out of money provided by Parliament.

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

Section 82: Interpretation

328. [Section 82](#) makes provision regarding the interpretation of certain terms.

Section 83: Commencement

329. [Section 83](#) makes provision for the coming into force of the provisions of the Act.

Section 84: Short title and extent

330. [Section 84](#) makes provision as to the short title and as to the extent of the provisions of the Act.