These notes refer to the NHS Redress Act 2006 (c.44)
which received Royal Assent on 8th November 2006

NHS REDRESS ACT 2006

EXPLANATORY NOTES

1. These explanatory notes relate to the NHS Redress Act 2006, which received Royal Assent on 8th November 2006. They have been prepared by the Department of Health in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.

2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

SUMMARY AND BACKGROUND

3. In July 2000 the Government published *The NHS Plan, A plan for investment, a plan for reform*[1], which committed the NHS to a 10 year process of reform. In particular, the NHS Plan committed the Department of Health to looking at ways to improve the system for handling and responding to clinical negligence claims. The current system:

   - is perceived to be complex, unfair (as apparently similar cases may have different outcomes) and slow;
   - is costly both in terms of legal fees and in diverting clinical staff from clinical care;
   - has a negative effect on National Health Service (NHS) staff morale and on public confidence;
   - leads to patient dissatisfaction with the lack of explanations, apologies or reassurances that action has been taken to prevent the same incident happening to another patient; and
   - encourages defensiveness and secrecy in the NHS, which stands in the way of learning and improvement in the health service.

4. In August 2001, the Chief Medical Officer (CMO) published *Call for Ideas*[2], a consultation document inviting patients, NHS staff, the public and other key stakeholders to give their views on how the NHS of the future should handle clinical negligence incidents. The CMO published his recommendations for reform in *Making Amends*[3], a consultation paper setting out proposals for reforming the approach to clinical negligence in the NHS, in June 2003. This Act gives effect to the proposal set out in recommendation 1 of that paper, namely to introduce an NHS Redress Scheme to provide investigations when things go wrong, remedial treatment, rehabilitation and care where needed, explanations and apologies, and financial compensation in certain circumstances.

5. The Act provides for the establishment of a scheme to enable the settlement, without the need to commence court proceedings, of certain claims which arise in connection with hospital services provided to patients as part of the health service in England, wherever

---

1 Cm 4818, available at: http://www.dh.gov.uk/assetRoot/04/05/57/83/04055783.pdf
2 Available at: http://www.dh.gov.uk/assetRoot/04/07/80/09/04078009.pdf
3 Available at: http://www.dh.gov.uk/assetRoot/04/06/09/45/04060945.pdf

those services are provided. The Act establishes the parameters of the cases to which any such scheme can apply, and which bodies can be members of a scheme, and gives the Secretary of State powers to set out in regulations the detailed rules that govern the scheme. Those powers include the power to place new duties on scheme members and the Commission for Healthcare Audit and Inspection (known as the Healthcare Commission) to consider whether cases or complaints fall within a redress scheme and, if they do, to take appropriate action.

TERRITORIAL EXTENT

6. The Act extends only to England and Wales.

TERRITORIAL APPLICATION: WALES

7. Section 17 of the Act gives a regulation-making power to the National Assembly for Wales. The broad framework power enables the National Assembly by regulations to make any provision that could be made by an Act of Parliament (subject to certain limitations) with regard to providing a mechanism for the out-of-court settlement of claims in tort arising out of services provided as part of the health service in Wales.

COMMENTARY ON SECTIONS

Section 1: Power to establish redress scheme

8. This section sets out the principle that the Secretary of State may by regulations establish one or more redress schemes, such a scheme being a mechanism for enabling redress to be provided without the need to go to court. It is envisaged that only one such scheme will be established in England.

9. It sets out the cases to which a scheme may apply. A scheme may only apply to cases involving liabilities in tort arising out of qualifying services provided as part of the NHS in England, whether provided in England, in another part of the UK or abroad (*subsections (2) and (5)*). This means that a scheme may cover people with claims in tort arising out of hospital treatment as part of the NHS wherever that hospital treatment might be provided.

10. A scheme can only apply to cases involving liability in tort arising on the part of the Secretary of State, a Primary Care Trust (PCT), a designated Strategic Health Authority, or a person or organisation providing services, or arranging for the provision of services, which are the subject of arrangements with either the Secretary of State, a PCT or a designated Strategic Health Authority (*subsection (3)*). This means that a scheme can cover people with claims in tort arising out of qualifying services provided as part of the NHS however that treatment may be provided, regardless of who is providing the services and regardless of the contracting mechanism by which the services are provided.

11. In section 1 –

- "designated Strategic Health Authority" means a Strategic Health Authority that is designated in regulations for the purposes of the Act (section 18). This will enable the Secretary of State to designate Strategic Health Authorities if they become involved in the commissioning of hospital services;

- persons and organisations providing services, or arranging for the provision of services, do not include persons doing so pursuant to a contract of employment (*subsection (9)*). The services provided by individuals under such contracts will be covered by the scheme as a result of the liability of the organisation providing the services, as opposed to the liability of the individual health care professional.

12. This section also provides that only certain types of liability in tort can be covered by a scheme (*subsection (4)*). These are referred to in the Act as "qualifying liabilities in

tort": this means liabilities in tort (a) in respect of personal injury or loss arising out of a breach of a duty of care in relation to the diagnosis of illness, or the care or treatment of any patient, and (b) arising as a consequence of any act or omission by a healthcare professional. "Healthcare professional" is defined in *subsection (10)* as a member of a profession (whether regulated or unregulated) that is concerned with the physical or mental health of individuals. The definition of "qualifying liability in tort" is intended to exclude from the scope of a redress scheme liability, for example, arising from slipping or tripping caused by the acts or omissions of non-health care professionals such as hospital cleaners or hospital maintenance personnel.

13. A scheme is not restricted to claims by patients: insofar as claims otherwise fall within the definition in *subsection (4)*, it may cover claims that could be brought following the death of a patient by virtue of the Law Reform (Miscellaneous Provisions) Act 1934 (which provides that where a person has a cause of action and that person dies, the action may be pursued for the benefit of his estate). It may also cover claims brought by the dependents of a deceased patient under the Fatal Accidents Act 1976 (which provides that where a person's death is caused by any wrongful act, neglect or default which is such that, had death not occurred, it would have entitled the person injured to maintain an action and recover damages in respect of the injury, liability to an action for damages continues for the benefit of dependents of the person who died, such as a wife, child or civil partner).

14. *Subsection (5)* sets out the services that are qualifying services for the purposes of the scheme. *Subsection (5)(a)* provides that a scheme may apply to cases involving liabilities in tort arising out of hospital services provided as part of the NHS in England, whether provided in England, in another part of the UK or abroad. *Subsection (5)(b)* enables the Secretary of State to include in a scheme services of such other description as may be specified. Hence the scope of the scheme could be enlarged should it be desired to include services of a type usually provided in a hospital: an example might be where hospital-like services are provided within a prison. The power may also be used to extend the scheme to:

- services of a kind usually provided in a hospital which happen not to be so provided (for example, pathology laboratory services, which can be provided in hospitals or in free-standing units);
- services that are currently normally provided in a hospital, but which may in future be more frequently provided out of the hospital setting (for example, palliative care);
- services of the type falling in the "grey areas" between primary and secondary care (for example, ambulance services).

15. *Subsection (6)* excludes primary care services, i.e. primary dental services, primary medical services, general ophthalmic services, and local pharmaceutical services, from the scope of the scheme. *Subsection (7)* enables the Secretary of State to specify services in regulations that are not to be regarded as primary dental or primary medical services and that thus may be brought within the scope of the scheme. This power may be used to clarify whether specified services fall within the scope of the scheme where there may be doubt about this. *Subsection (8)* makes clear that services specified in regulations under *subsection (5)(b) or (7)* may be described by reference to the manner or circumstances in which they are provided.

Section 2: Application of scheme

16. This section sets out that a scheme may make provision defining the cases to which it applies: such provision will need to be within the scope of the broad parameters for a scheme set out in section 1. Cases that are or have been the subject of civil proceedings in court have to be excluded from a scheme (*subsection (2)*).

Section 3: Redress under scheme

17. This section sets out in more detail the type of provision that the Secretary of State may make in respect of a scheme, and includes some provisions that the Secretary of State must make in respect of a scheme. The Secretary of State is obliged to provide in regulations establishing a scheme for redress ordinarily to take the form of (a) the making of an offer of compensation in satisfaction of rights to bring court proceedings, (b) the giving of an explanation (which it is currently envisaged will cover explanations of how the harm or loss came about), (c) the giving of an apology, and (d) the giving of a report on the action which has been, or will be, taken to prevent similar cases arising *(subsection (2)*).

18. *Subsection (3)* gives particular examples of the sort of provision that regulations about redress under the scheme might include. For example, the scheme may provide for offers of redress under the scheme, where appropriate, to include contracts for future remedial care that is needed, alongside financial compensation (*subsection (3)(a)*). The scheme may also set out the circumstances in which different forms of compensation may be offered (*subsection (3)(b)*). For example, the scheme may make provision about the circumstances in which it is appropriate for an offer of redress to include a contract for future remedial care.

19. *Subsection (4)* provides for matters that a scheme may, in particular, provide for if the scheme provides for financial compensation to be offered: a scheme may make provision in relation to the matters in relation to which financial compensation can be offered (*subsection (4)(a)*) and the assessment of the amount of any financial compensation (*subsection (4)(b)*). A scheme may, for example, provide that a person seeking redress must be offered general damages (for pain and suffering) in line with the general law on damages, and that special damages (loss of earnings and other costs incurred as a result of the injury) must be assessed in light of whether there is adequate proof of such loss (e.g. receipts) and whether the sort of damages claimed can properly be claimed as special damages in accordance with the law that governs what types of loss a claim for special damages can include.

20. *Subsection (5)* provides that, if it provides for financial compensation, the scheme must specify an upper limit either on the total amount of financial compensation that may be included in an offer under the scheme (*subsection (5)(a)*) or on the amount of financial compensation that may be included in an offer in respect of pain and suffering (which is normally referred to in negligence claims as general damages) (*subsection (5)(b)*). *Subsection (5)(c)* makes clear that the scheme may not set any other limits on the level of financial compensation. It is currently envisaged that the scheme will specify the maximum amount of financial compensation that may be offered to people seeking redress under the scheme.

Section 4: Commencement of proceedings under scheme

21. This section provides that a scheme may include such provision as the Secretary of State thinks fit about how proceedings under the scheme are to be started. It gives examples of the sort of provision that might be made about the starting of proceedings under the scheme (*subsection (2)*). It is, for example, envisaged that the scheme may provide that proceedings under the scheme cannot be commenced in respect of an injury where an offer under the redress scheme in respect of the same injury has previously been rejected.

22. The scheme may, for example, provide for a scheme member to be under a duty to start proceedings under the scheme, either on receipt of an application for redress, or as the result of a scheme member identifying a case to which the scheme applies (*subsection (2)(a), (b) and (e)* and also section 5). The scheme might also provide that each stage of the scheme is governed by time limits to ensure consistency and appropriate speed in the handling of cases (*subsection (2)(c)*).

Section 5: Duty to consider potential application of scheme

23. This section sets out that the Secretary of State can in regulations make provision as to how and when particular bodies or persons must consider whether a case (for example, an adverse incident that is under investigation, or the subject of a complaint) is eligible under the redress scheme, and the steps that it must take if it identifies such a case. It is currently envisaged that when such a case is identified, the relevant body or person will be placed under a duty either to notify the relevant scheme member or to begin proceedings under the scheme, as appropriate.

24. *Subsection (2)* lists the bodies and persons that may be placed under the duty to consider the potential application of the scheme. They are those bodies and persons to whose liability a scheme applies and the Commission for Healthcare Audit and Inspection (known as the Healthcare Commission).

Section 6: Proceedings under scheme

25. This section sets out the sort of provision that a scheme may make as regards proceedings under the scheme (*subsections (1) and (2)*). For example, the Secretary of State may make provision about the investigation of cases under the scheme, the making of decisions about the application of the scheme, about the assessment of liability under the scheme and about the form and content of settlement agreements under the scheme.

26. A scheme may, for example, specify that decisions on eligibility of cases to be considered under the scheme will be made by the scheme authority, and that offers of redress will be open for a set period of time for consideration by the patient or such other person as is eligible for redress under the scheme where appropriate (such as where there is a claim under the Fatal Accidents Act 1976). A scheme may also, for example, provide that certain offers of redress must be subject to approval by a court (*subsection (2)(e)*). It is currently envisaged that such provision might be made in cases involving offers made to children or mentally incapacitated people.

27. A scheme must provide for the findings of an investigation to be recorded in an investigation report (*subsection 3(a)*) and for the report to be made available on request to the individual seeking redress *(subsection 3(b)*). The scheme may provide that the report need not be provided before the offer is made or before proceedings are terminated (*subsection 4(a)*). A scheme may also specify other circumstances where reports need not be provided (*subsection 4(b)*); this is intended for rare cases where there are, for example, patient confidentiality issues.

28. This section also sets out that a scheme must provide for a settlement agreement reached under the scheme to include a waiver of the right to bring court proceedings in respect of the liability to which the settlement relates (*subsection (5)*).

Section 7: Suspension of limitation period

29. This section requires a scheme to provide for the period of time when a case is being considered under the scheme to be disregarded when calculating whether any time limit for bringing court proceedings has expired. For example, section 11 of the Limitation Act 1980 provides that court proceedings founded in tort for damages in respect of personal injury cannot generally be brought more than 3 years from the date on which the cause of action accrued (or, if later, the date on which the person became aware of the cause of action). This provision will therefore ensure that a patient is not prejudiced by, or prevented from litigating as a result of, waiting for the result of an investigation under the redress scheme, for example where he or she is dissatisfied with an offer made under the scheme and therefore subsequently wishes to bring court proceedings. The scheme may define when a case is considered to be the subject of proceedings under the scheme, so that it is absolutely clear when the time to be disregarded begins and ends (*subsection (3)*). Regulations might, for example, provide for the period of time to be disregarded to begin when the scheme member begins proceedings under the scheme

and for that period to stop (i.e. for the limitation period to start running again) at the end of the fixed period of time that the patient is allowed to consider an offer of redress under the scheme or (if earlier) when the patient chooses to reject the offer.

Section 8: Legal advice etc

30. This section sets out that a scheme may make provision for free legal advice to be provided to individuals seeking redress under the scheme (*subsection (1)(a)*). *Subsection (2)* further provides that a scheme must provide for legal advice to be given free of charge to the patient or other person eligible for redress under the scheme in relation to the offer and any settlement agreement under the scheme. It is currently envisaged that such advice may be provided for the purpose of assessing whether or not an offer under the scheme is reasonable and equivalent to what the patient would have received through the courts. The scheme may provide that free legal advice has to be supplied by a provider included in a list held by a particular body (*subsection (3)*). It is envisaged that the scheme might, for example, provide that a body such as the Legal Services Commission will compile and maintain a list of independent providers of legal advice, with whom the scheme authority will have made arrangements for the provision of such advice at a flat rate.

31. *Subsection (1)(b)* also allows a scheme to stipulate other services, including the services of medical experts, that are to be provided in connection with proceedings under the scheme. Such services might, for example, include mediation services or the services of a jointly instructed independent medical expert. If the scheme provides for the services of medical experts, they will be jointly instructed by the scheme authority and the individual seeking redress (*subsection (4)*).

Section 9: Assistance for individuals seeking redress under scheme

32. This section requires the Secretary of State to arrange, to such extent as he considers necessary, for the provision of assistance to individuals seeking redress, or intending to seek redress, under a scheme: this assistance may take the form of representation or some other form of assistance (*subsection (1)*). The section provides that the Secretary of State may make such other arrangements as he thinks fit for the provision of assistance to individuals in connection with cases which are the subject of proceedings under the scheme (*subsection (2)*). Where the Secretary of State makes arrangements under this section, he may make payments to any person in respect of those arrangements (*subsection (3)*), that is, he may fund the provision of the assistance provided under this section. In making any arrangements pursuant to this section, the Secretary of State is required to have regard to the principle that arrangements for the provision of assistance should, in so far as is practicable, be independent of any person to whose conduct the case relates or who is involved in dealing with the case (*subsection (4)*).

Section 10: Scheme members

33. This section provides that a scheme may make provision about membership of the scheme and the functions of members of the scheme. In particular, a scheme may require or permit a specified body or other person to be a member of the scheme (*subsection (2)(a)*): for example, it is envisaged that a scheme may require NHS trusts, NHS foundation trusts, PCTs and independent providers in England to be members of a scheme. A scheme may also provide that where the scheme applies to cases involving liabilities of a person who is not a member of the scheme, a member of the scheme, eg. the PCT, that is responsible for commissioning hospital services from the non-member will be required to deal with the cases under the scheme (*subsection (4)*).

33. *Subsection (2)* lists some particular provisions that might be made by a scheme. A scheme may, for example, provide for scheme members to undertake investigations, notify the patient of proceedings under the scheme, and provide the patient with an

explanation, an apology, an offer of remedial care and compensation in line with the scheme authority's recommendation on the amount of compensation to be offered (*subsection (2)(b)*). The scheme may also provide for one scheme member to carry out functions on behalf of another in appropriate circumstances (*subsection (2)(c)*); for example a PCT which contracts with very few providers, if those providers were not themselves members of the scheme, may wish to make arrangements with another PCT administering the scheme to carry out functions on its behalf in order to achieve economies of scale.

34. A scheme may provide for scheme members to have regard to guidance published by the scheme authority in order to ensure that the scheme is applied consistently (*subsection (2)(d)*). A scheme may also require scheme members to contribute to the costs of the scheme through contributions collected by the scheme authority (*subsection (2)(g)*): it is envisaged that the arrangements for contributions might, for example, be similar to the arrangements for contributions to the Clinical Negligence Scheme for Trusts[4]. A scheme may also require a scheme member to charge an individual of a specified description (for example, a director) with responsibility for overseeing the carrying out of specified functions under the Act (*subsection 2(h)*), and advising the member about lessons that can be learnt from cases involving the member that are dealt with under the scheme (*subsection (2)(i)*).

35. A scheme must also require a scheme member to prepare and publish an annual report about cases under the scheme and the lessons to be learnt from them (*subsection (3)*).

Section 11: Scheme authority

36. This section requires the Secretary of State to make provision in a scheme as to the functions of the scheme authority (*subsection (1)*). The scheme authority has to be a Special Health Authority: it is intended that this will be an existing Special Health Authority, namely the National Health Service Litigation Authority (NHSLA)[5].

37. *Subsection (2)* lists some functions that may be given to the NHSLA in its capacity as the scheme authority. A scheme might provide, for example, for the role of the scheme authority to include giving advice on the amount of compensation to be offered under the scheme, and acting as agent for scheme members in the making of payments under the scheme (*subsection (2)(b)*). A scheme may also require the scheme authority to issue advice and guidance about specified matters (*subsection (2)(c)*). A scheme may require the scheme authority to collect contributions from scheme members in order to fund the scheme (*subsection (2)(e)*).

38. *Subsection (3)* ensures that a Special Health Authority can be created to undertake the functions of a scheme authority. Section 11 of the National Health Service Act 1977 normally only allows the creation of a Special Health Authority for the purpose of exercising a function that can be conferred under or by virtue of the National Health Service Act 1977. This subsection therefore provides that, for the purpose of determining which functions may be conferred on a Special Health Authority, the provisions of the Act are deemed to form part of the National Health Service Act 1977.

Section 12: General duty to promote resolution under the scheme

39. This section imposes a general duty to promote resolution under the scheme. A duty will be imposed on scheme members and the scheme authority to have regard, when

---

4 See http://www.nhsla.com/Claims/Schemes/CNST/ for further information on the Clinical Negligence Scheme for Trusts (established under section 21 of the National Health Service and Community Care Act 1990).

5 The NHSLA was established by the National Health Service Litigation Authority (Establishment and Constitution) Order S.I. 1995/2800, as amended by S.I.s 2002/2621, 2005/503 and 2005/1445. The National Health Service Litigation Authority Regulations S.I. 1995/2801, as amended by S.I. 1996/968 and S.I. 2000/2433, contain provision about the appointment of members and a chair to the NHSLA, the appointment of committees and sub-committees and various other provisions about the functioning of the NHSLA.

carrying out their functions under the scheme, to the desirability of settling the case without recourse to civil proceedings.

Section 13: Duties of co-operation

40. This section establishes a new duty of co-operation between the scheme authority (the NHSLA) and the Healthcare Commission (*subsection (1)*), and the scheme authority and the National Patient Safety Agency (*subsection (2)*). This is intended to help the scheme to operate effectively.

Section 14: Complaints

41. This section enables the Secretary of State to make regulations providing for the handling of complaints about maladministration in the exercise of functions under, or relating to proceedings under, a scheme, or about maladministration in connection with settlement agreements under a scheme (*subsection (1)*). The regulations must provide for this procedure to be operated either by the scheme authority or by scheme members. The regulations may also make provision about who may make a complaint, which complaints are and are not covered by the procedure, to whom complaints are to be made, the timeframe within which complainants must receive a response, the form that a response must take, the procedure to be followed, and the action to be taken as a result (*subsection (4)*). The regulations may provide that the body operating the complaints procedure must make information about the procedure available to the public (*subsection (5)*), that different parts of a complaint may be treated differently (for example, for different procedures to apply to different aspects of a complaint) and that documents may be required to be disclosed in order for the complaint to be investigated, subject to any legislative restrictions on disclosure (for example, in the Data Protection Act 1998) (*subsection (6)*). The regulations may also make provision about how complaints that also fall under complaints procedures set up under other legislation, as well as the complaints procedure established under section 14, are to be dealt with (*subsection (7)*).[6]

42. The regulations may also make provision for securing that complaints made in connection with the redress scheme but which fall to be considered under other statutory complaints procedures, are referred to the organisation operating those procedures, and that they be treated as if they had been raised as a complaint under those procedures (*subsection (8)*). *Subsection (10)* amends section 31(6) of the Data Protection Act 1998 so that personal data processed for the purpose of dealing with complaints under the redress scheme complaints procedure may be exempt from the subject information provisions of that Act. The subject information provisions of the Data Protection Act 1998 allow for individuals, except in certain defined circumstances, to seek and obtain information about them which is held by others. Section 31 of the Data Protection Act 1998 provides an exemption from these provisions by reference to a number of different categories of regulatory function exercised by public bodies.

Section 15: Remit of Health Service Commissioner for England

43. This section amends the Health Service Commissioners Act 1993 to broaden the remit of the Health Service Commissioner for England to include complaints relating to maladministration in relation to the exercise of functions under the scheme, in connection with a settlement agreement under the scheme or in the exercise of any functions in relation to complaints made under regulations under section 14. The effect is to allow the Commissioner to investigate complaints about such maladministration, and to report on her findings following the investigation of such a complaint.

---

6 The powers under section 14 are similar to the powers under sections 113 and 115 of the Health and Social Care (Community Health and Standards) Act 2003 (c.43) (complaints about health care).

Section 16: Regulations

44. This section makes further provision about the Secretary of State's regulation-making powers under the Act. In particular, the first regulations establishing a scheme (and any subsequent regulations that establish an entirely new scheme) are required to be laid before and approved by each House of Parliament before they can be made (normally referred to as the affirmative procedure) (*subsection (6)*). All other regulations are subject to annulment in pursuance of a resolution of either House of Parliament (normally referred to as the negative procedure) (*subsection (7)*): this means that such regulations can come into force without Parliamentary approval but that Parliament will have 40 days after they have been laid before Parliament to pass a resolution annulling them. If such a resolution was passed, the regulations would cease to have effect from the date of the resolution.

Section 17: Framework power (Wales)

45. Section 17 gives the National Assembly for Wales a broad power to make regulations establishing arrangements for redress in respect of Wales. The section has its foundation in the principles set out in the Wales Office's White Paper: *Better Governance for Wales*[7], which was presented to Parliament on 15 June 2005. The White Paper contains the Government's proposals for developing the devolution settlement in Wales.

46. The arrangements made under this section may cover people with claims involving qualifying liability in tort arising out of the provision of services as part of the health service in Wales (whether those services are provided in Wales or elsewhere), and connected matters (*subsection (1)*). The Assembly is not under an obligation to set up a "scheme". The arrangements are not restricted to claims arising from harm caused in hospital settings. "Qualifying liability in tort" is defined more widely than in section 1 (*subsection (2)*): it is not restricted to liability arising from acts or omissions on the part of healthcare professionals. The broad scope of this power is intended to allow the National Assembly for Wales to determine arrangements for redress which are most relevant to its policies and plans for the health service in Wales.

47. *Subsection (3)* establishes that regulations made by the National Assembly for Wales under this section may include any provision that could be made by an Act of Parliament, apart from those provisions identified at *subsection (4)*. The scope of the regulation-making power is similar to the regulation-making power in section 2(2) and (4) of the European Communities Act 1972.

48. *Subsection (4)* places a number of restrictions on the National Assembly for Wales in exercising its power under *subsection (1)*. The Assembly cannot:

(a) make any provision imposing or increasing taxation;

(b) give any of the provisions in the regulations retrospective effect;

(c) sub-delegate the power to legislate;

((d) create a new criminal offence;

((e) make provision extending otherwise than to England and Wales; or

((f) make any provision which applies to England, without the consent of the Secretary of State.

49. *Subsection (5)* provides that *subsection (4)(c)* does not preclude the modification of a power to legislate granted otherwise that under *subsection (1)*, nor does *subsection (4)(c)* preclude the extension of any such power to purposes of a like nature as those for which it was conferred.

---

7 Cm 6582; see in particular paragraphs 1.24 and 3.12

50. *Subsection (6)* provides that sub-delegating a power to give directions as to matters of administration is not to be regarded as a power to legislate within the meaning of *subsection (4)(c)*. *Subsection (7)* allows the National Assembly for Wales to exercise the power under *subsection (1)(a)* in respect only of some of the cases covered by the power, if it sees fit.

Section 18: Interpretation

51. Section 18 provides definitions for the expressions used in the substantive sections. Some of the definitions refer to the meaning given in the National Health Service Act 1977: section 128 of that Act contains the relevant definitions.

COMMENCEMENT DATE

52. The commencement section (section 19) provides that the Act (with the exception of sections 17 to 19) will come into force on a day appointed by order by the Secretary of State. Section 17 will come into force on a day appointed by order made by the National Assembly for Wales. Sections 18 and 19 will come into force on the day on which the Act is passed.

HANSARD REFERENCES

The following table sets out the dates and Hansard references for each stage of this Act's passage through Parliament.

Stage	***Date***	***Hansard Reference***
House of Lords		
Introduction	12 October 2005	Vol 674 Col 291
Second Reading	2 November 2005	Vol 675 Cols 204 - 239
Grand Committee	21 and 23 November 2005	Vol 675 Cols 327 - 386 and 387 - 430
Report	15 February 2006	Vol 678 Cols. 1153 - 1213
Third Reading	1 March 2006	Vol 679 Col 259
House of Commons		
Second Reading	5 June 2006	Vol 447 Cols 23 - 82
Committee	13 and 15 June 2006	Hansard Standing Committee B
Report and Third Reading	13 July 2006	Vol 448 Cols 1521 - 1581
House of Lords		
Commons Amendments	25 October 2006	Vol 685 Cols 1233 – 1258
House of Commons		
Lords Messages Considered	6 November 2006	Vol 451 Cols 578 - 593
House of Lords		
Commons Amendments	6 November 2006	Vol 686 Cols 633 - 638
Royal Assent – 8 November 2006		House of Lords Hansard Vol. 686 Col 750
		House of Commons Hansard Vol. 451 Col 825