

*These notes refer to the Health and Social Care Act 2008
(c.14) which received Royal Assent on 21 July 2008*

HEALTH AND SOCIAL CARE ACT 2008

EXPLANATORY NOTES

BACKGROUND AND SUMMARY

Part 5 – Miscellaneous

Human Rights Act 1998: provision of certain social care to be public function

55. The Human Rights Act 1998 places a duty on all public authorities, which includes independent sector organisations when carrying out a public function, **not** to act incompatibly with the European Convention on Human Rights ('the Convention'). The Government's intention at the time of the passage of the Human Rights Bill through Parliament was that this would mean the protections provided by the Convention should apply to independent sector care homes when providing accommodation and care to an individual under a local authority contract. In the case of *YL v Birmingham City Council* [2007] UKHL 27, the House of Lords decided that when providing accommodation and care under a local authority contract independent sector care providers were not carrying out a public function and were therefore not public authorities for the purposes of the Human Rights Act. Accordingly, these providers are not required by the Human Rights Act to act compatibly with the Convention rights. Section 145 ensures that the protections provided by the Human Rights Act apply to people receiving publicly arranged care in an independent sector care home.