

*These notes refer to the Health Act 2009 (c.21)  
which received Royal Assent on 12 November 2009*

# HEALTH ACT 2009

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## EXPLANATORY NOTES

### TERRITORIAL EXTENT: FURTHER INFORMATION

71. Most of the provisions contained in the Act extend to England and Wales only, with a small number of provisions extending more widely. The Act contains provisions that apply to England only, to Northern Ireland only, to England and Wales, to England, Wales and Northern Ireland, and to the United Kingdom.

#### *Part 1: NHS Constitution, Quality Accounts, Direct payments and Innovation*

72. [Part 1](#) of the Act extends to England and Wales, but applies only in relation to the provision of NHS services in England.

#### *Part 2: De-authorisation of NHS foundation trusts and trust special administrators*

73. Chapters 1 of Part 2 of the Act extends to England and Wales but the provisions apply only in relation to NHS bodies in England.

#### *Suspension*

74. The amendments made by section 19 in Chapter 2, Part 2 of, and Schedule 3 to the Act have the same extent as the Acts which are being amended. Some of the new powers of suspension relate to bodies operating in more than one part of the UK.

#### *Part 3: Miscellaneous*

##### *Tobacco*

75. The sections relating to tobacco in Part 3 of the Act have the same extent as the enactments which the provisions amend. The 2002 Act extends to the whole of the UK, the 1991 Act extends to England and Wales and Scotland, and the 1991 (NI) Order extends to Northern Ireland only. However, the amendments made to the 2002 Act by sections 20 and 21, and those to the 1991 Act made by section 22, do not apply in relation to Scotland.

##### *Pharmaceutical services*

76. The changes regarding pharmaceutical services in sections 25, 26, 27, 28 and 29 extend to England and Wales but apply only in England. The amendments made by sections 30, 31 and 32 extend to England and Wales but apply only in relation to Wales.

##### *Private patient income*

77. [Section 33](#) extends to England and Wales, but the provisions apply only in relation to NHS bodies in England (NHS foundation trusts).

***Optical appliances***

78. Section 180(2)(c) of the National Health Service Act 2006 repealed by section 34 applied only to England.

***Adult social care***

79. The changes to the powers of the LGO in England in section 35 and Schedule 5 extend to England and Wales, but apply only in relation to England.

***Disclosure of information***

80. The provisions in section 36 for disclosure of information held by HMRC extend to the whole of the UK.

***Territorial application: Wales***

81. The Act confers a number of new or expanded powers on the Welsh Ministers. The following table lists the sections within the Act which affect the existing powers of, or confer new powers or duties on, the Welsh Ministers.

<i>Section</i>	<i>Subject of section</i>	<i>Effect on the powers of the Welsh Ministers</i>
Part 2, section 19 and Schedule 3	Powers to suspend chairs and non-executive directors	Schedule 3 gives the Welsh Ministers new or expanded powers in relation to the suspension of members of Special Health Authorities, community health councils and standing advisory committees.  In relation to Special Health Authorities and standing advisory committees which are cross-border bodies, functions exercisable by the Welsh Ministers under the National Health Service (Wales) Act 2006 (the NHS (Wales) Act) are exercisable concurrently with the Secretary of State and functions exercisable by the Secretary of State under the NHS Act are exercisable concurrently with Welsh Ministers.
Part 3, section 20	New section 6(A1) of the 2002 Act (prohibition of advertising: exclusion for specialist tobacconists)	Enables the Welsh Ministers to provide in regulations that specialist tobacconists do not commit an offence under section 2 of the 2002 Act (prohibition of tobacco advertising) if a tobacco advertisement on their premises meets certain requirements. This power replaces an automatic exclusion for specialist tobacconists currently provided by section 6(1) of the 2002 Act.
Part 3, section 21	New section 7A(2) and (3) of the 2002 Act (prohibition of tobacco displays)	Enables the Welsh Ministers to make regulations to provide for the meaning of “place” and to distinguish between displays and advertisements for the purposes of the prohibition on displaying tobacco products (under the new section 7A(1) of the 2002 Act).
Part 3, section 21	New section 7B(3) of the 2002 Act (tobacco	Enables the Welsh Ministers to make regulations providing for exclusions from the

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<i>Section</i>	<i>Subject of section</i>	<i>Effect on the powers of the Welsh Ministers</i>
	displays: exclusions and defence)	prohibition on displaying tobacco products (under the new section 7A(1) of the 2002 Act).
Part 3, section 21	New section 7C(1) of the 2002 Act (displays: prices of tobacco products)	Enables the Welsh Ministers to make regulations imposing requirements in relation to the display in a place in Wales of the prices of tobacco products.
Part 3, section 22	New section 3A of the 1991 Act (sales from vending machines in England and Wales)	Enables the Welsh Ministers to make regulations prohibiting the sale of tobacco from vending machines in Wales.
Schedule 4, paragraph 7(6)	New section 13(5A) of the 2002 Act (enforcement)	Creates a power for the Welsh Ministers to take over the conduct of any proceedings, in respect of an offence under the 2002 Act committed in Wales, instituted in England and Wales by another person.
Schedule 4, paragraph 12	Substitutes a new definition of “appropriate Minister” in section 21(1) of the 2002 Act (interpretation)	By amending the definition of “appropriate Minister” for the purposes of the 2002 Act, powers under section 4(3) (power to grant exclusions from the section 2 prohibition of tobacco advertising) and section 13(3) (power to direct that any duty imposed on an enforcement authority shall be discharged by the appropriate Minister) of the 2002 Act are transferred to the Welsh Ministers.
Part 3, section 32	Powers of Local Health Boards in Wales	Enables Welsh Ministers to make regulations which will permit Local Health Boards to provide local pharmaceutical services (LPS) in certain circumstances, which will be set out in regulations made by the Welsh Ministers.
Part 3, section 31	Pharmaceutical and ophthalmic services	Enables Welsh Ministers to make regulations setting out requirements as to the quality of services provided by pharmaceutical and ophthalmic practitioners.
Part 3, section 36	Legal gateway for data on GP and dentists’ pay	Enables the disclosure of summarised anonymised statistical information relating to GPs and dental practitioners to Welsh Ministers and persons providing services to them or exercising functions on their behalf.

### ***Territorial application: Scotland***

82. The Bill for this Act did not contain any provisions that fell within the terms of the Sewel Convention.

### ***Northern Ireland***

83. The Act makes provision for DHSSPSNI in relation to one matter for which a legislative consent motion was required, namely the provisions on suspension of members of the Human Tissue Authority and bodies established under the Medicines Act 1968 contained in section 19 and Schedule 3.