

# HEALTH ACT 1999

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### Part III – Miscellaneous and Supplementary

##### *Section 66: Devolution*

361. This section sets out how the provisions of the Act are to be treated for devolution purposes.
362. Subsection (1) provides that the provisions in the Act that extend to Scotland (except section 22) are to be taken to be a “pre-commencement enactment”, the meaning of which is set out in section 53 of the Scotland Act 1998. Section 53 (inter alia) provides for the transfer of functions, which are conferred in any Act of Parliament upon the Secretary of State, to the Scottish Ministers in so far as they relate to matters devolved to the Scottish Parliament. By treating the provisions under sections 45 to 59 as a pre-commencement enactment any new Secretary of State function conferred by those sections automatically transfers to the Scottish Ministers by virtue of section 53 of the 1998 Act.
363. [Section 22](#) of the Act (arrangements with Ministers and the Commission for Health Improvement) is excluded from section 66(1). The effect is that the power to enter into arrangements with the Commission in respect of Scotland will be retained by Ministers of the Crown, and Scottish Ministers will not be able to enter into such arrangements. The Commission will not be exercising functions in relation to the NHS in Scotland; it may however enter into arrangements to exercise functions in relation to the health care provided to prisoners and the Armed Forces in Scotland (such care remains the responsibility of the Home Secretary and the Secretary of State respectively). The provisions of section 22 are explained in more detail in paragraph 206 above.
364. Subsection (2) confers on the National Assembly for Wales the power to commence in relation to Wales certain provisions in the Act which confer new functions on the Secretary of State.
365. Subsection (3) adds the Commission for Health Improvement to the list of bodies whose members or staff can be required to attend the National Assembly for Wales, or its committees, to give evidence or produce documents.
366. Subsections (4) to (5) make textual amendments to Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999. In particular, subsection (5) inserts an entry for the "Health Act 1999". The effect of these provisions is that the functions conferred on the Secretary of State by the provisions of the Act listed in subsection (5) (c) are, in relation to Wales, exercisable by the Assembly. This does not include functions in respect of the control of prices of medicines and profits or the regulation of health care and associated professions, which will be exercisable by the Secretary of State for Health.

*These notes refer to the Health Act 1999 (c.8) which received Royal Assent on 30 June 1999*

367. The secondary legislation made by the Assembly pursuant to these new functions will generally be subject to the Assembly's own secondary legislation scrutiny procedures, rather than the Westminster procedures set out in section 62 of the Act.
368. Subsection (6) amends Schedule 2 to the National Assembly for Wales (Transfer of Functions) Order 1999 and provides that some functions in relation to the Commission for Health Improvement are to be exercisable only with the agreement of the Assembly or, in some cases, after consultation with the Assembly.