

HEALTH PROTECTION AGENCY ACT 2004

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Health Protection Agency Act 2004 which received Royal Assent on 22 July 2004. 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. The purpose of the Act is to establish the Health Protection Agency as a UK-wide non-departmental public body. The Agency will be able to undertake both health functions and radiation protection functions including functions carried out by the Health Protection Agency Special Health Authority and the National Radiological Protection Board, both of which will be wound up when the Agency is created. These more integrated arrangements are intended to improve the UK's ability to tackle the problems posed by infectious disease and other hazards, including the UK's response to chemical, biological, radiological and nuclear (CBRN) terrorism.
4. The intention to create a Health Protection Agency with this range of functions was first announced in *Getting Ahead of the Curve*, the infectious disease strategy which was published by the Chief Medical Officer in January 2002. Further details of the Agency's proposed role in England, Wales and Northern Ireland were set out in *Health Protection: A Consultation Document on creating a health protection agency* (June 2002), and its role in Scotland was considered in *Health Protection in Scotland: A Consultation Paper*, issued by the Scottish Executive (November 2002).
5. A UK government decision was announced in November 2002 to create the Agency:
 - i) from 1 April 2003, as a special health authority in England and Wales, which would be able to carry out functions under the NHS Act 1977; and
 - ii) subsequently, as a non-departmental public body, which would be able to carry out a wider range of functions.

The Act provides for this second stage to be put into effect.

6. Scottish Ministers announced on 29 October 2003 that they had decided that the Health Protection Agency should take responsibility for the functions carried out by the National Radiological Protection Board for the Scottish Executive, and should also be able to provide some other services for Scotland.

OVERVIEW

7. The Act has 13 sections and 4 Schedules.

COMMENTARY

8. Subsection (1) of section 1 establishes the Health Protection Agency or in Welsh Yr Asiantaeth Diogelu Iechyd as a body corporate. (These names were chosen for the Health Protection Agency Special Health Authority, which will be wound up on the establishment of the non-departmental public body).
9. Subsection (2) introduces Schedule 1, which makes detailed provisions on the constitution of the Agency. The Schedule includes provisions about the membership of the Agency, its status, the chief executive, general provisions about terms of appointment and disqualification for appointment, proceedings, staff, finance, annual report, the authentication of the Agency's seal and regulations.

Section 2: Health Functions

10. Subsection (1) of section 2 gives the Agency certain functions in the area of health protection. These are similar to those exercised by the Health Protection Agency Special Health Authority.
11. Subsections (2) to (4) provide that the Secretary of State or the National Assembly for Wales, after consulting the other, may direct the Agency to take on other functions in relation to health. A similar flexibility exists in relation to the Health Protection Agency Special Health Authority, although the only functions it can take on are functions under the National Health Service Act 1977 (c. 49). These provisions are included to provide future flexibility.
12. Subsection (5) makes it clear that the giving of a direction under subsection (3) or (4) does not alienate the function from the appropriate authority.
13. Subsection (6) exempts from the application of section 2(1) functions of the Scottish Ministers and the Department of Health, Social Services and Public Safety in Northern Ireland. However the Scottish Ministers will be able to confer their functions falling within subsection (1) on the Agency, and to remove them from it, subject to the requirements and procedures described at subsections (7), (8) and (9). The Department in Northern Ireland will have similar powers, as provided at subsections (10), (11) and (12).

Section 3: Radiation Protection Functions

14. Subsection (1) of section 3 gives the Agency certain functions in the area of radiation protection. These are similar to those given to the National Radiological Protection Board by the Radiological Protection Act 1970 (c.46), although they go wider than those functions in that the Health Protection Agency will also be able to undertake activities in relation to ultrasound.
15. Subsection (2) allows the appropriate authority (as defined in section 6) to direct the Agency to take responsibility for functions which are carried out at the date of commencement by the National Radiological Protection Board. The National Radiological Protection Board provides a secretariat for one advisory non-departmental public body (the Committee on Medical Aspects of Radiation in the Environment) and a support unit for another (the Administration of Radioactive Substances Advisory Committee). The power makes it possible to direct the Agency to take over those functions. The power is subject to prior consultation as provided for by subsection (6).
16. Subsection (3) provides a power for the appropriate authority (as defined in section 6) to direct the Agency to exercise additional radiation protection functions. The power is similar to that provided by section 1(6)(a) and (c) of the Radiological Protection Act 1970, under which the Secretary of State for Health is able to confer additional radiation protection functions on the National Radiological Protection Board. (Again, ultrasound is not excluded from the matters in which the Agency may undertake a role). Subsection (6) qualifies the power in subsection (3) by making it subject to prior consultation.

17. Subsection (4) provides a power similar to that provided by section 1(7A) of the Radiological Protection Act 1970. Under the old power Health Ministers (as defined in the 1970 Act) may direct the National Radiological Protection Board to enter into an agreement with the Health and Safety Commission for the Board to carry out on behalf of the Commission certain of the Commission's functions. The new power applies also in respect of an agreement with the Health and Safety Executive for Northern Ireland. The power is subject to prior consultation as provided for by subsection (6).
18. Subsection (5) together with subsection (7) provide that the Agency must consult the Health and Safety Commission in relation to Great Britain or the Health and Safety Executive for Northern Ireland and have regard to those bodies' policies in exercising any function in which the Commission or the Executive has an interest. This is similar to the obligation placed on the National Radiological Protection Board by section 1(6A) of the Radiological Protection Act 1970.
19. Subsection (8) makes it clear that the giving of a direction under subsection (2) or (3) does not alienate the function from the appropriate authority.

Section 4: Functions: supplementary

20. Subsections (1)-(5) of section 4 set out various powers, including the power to make charges, which the Agency may use in the exercise of its functions.
21. Subsection (6) provides that the Agency must exercise its functions efficiently and cost-effectively.
22. Subsection (7) gives the appropriate authority (defined in section 6) the power to direct the Agency to have regard to aspects of the policy of the authority. Subsection (8) requires the Agency to comply with any such direction.
23. Subsection (9) gives the appropriate authority (as defined in section 6) the power, if it thinks that the Agency is to a significant extent failing to discharge any of its functions or failing to discharge any of its functions properly, to give the Agency such a direction as it thinks appropriate for remedying that failure. The power is subject to relevant consultation, described at subsection (13).
24. Subsection (10) allows the appropriate authority (as defined in section 6), instead of the Agency, to take such action as the authority thinks appropriate for remedying the failure, if the Agency fails to comply or unreasonably delays in complying with a direction under subsection (9).
25. Subsection (11) ensures that a disclosure of information to or by the Agency is lawful where the Agency is carrying out a function pursuant to an arrangement under section 31 of the Health Act 1999 (c.8) (arrangements between NHS bodies and local authorities) or under section 15 of the Community Care and Health (Scotland) Act 2002 (asp 5), or where the Agency acts in accordance with its duty of co-operation in section 5. However subsection (12) makes it clear that any such disclosure must not contravene the Data Protection Act 1998 (c. 29).

Section 5: Co-operation

26. **Section 5** puts the Agency and other bodies which exercise functions relating to the Agency's functions under a mutual duty of co-operation.

Section 6: Appropriate authority

27. **Section 6** identifies the authorities which have the power to direct the Agency, under sections 2, 3 and 4, and the functions in relation to which they have that power. It also identifies who may make a transfer scheme under section 8 (transfer of property and staff, etc.), and who may make a commencement order under section 12(5) (commencement).

Section 7: Publication of information

28. Section 7 gives the Agency a power to publish its advice and information.

Section 8: Transfer of property and staff etc

29. Subsections (1) to (4) of section 8 enable the Secretary of State to make one or more schemes for transferring property, rights and liabilities from the Agency's predecessor bodies to the Agency, subject to prior consultation of the relevant devolved administrations in each case. Subsection (5) enables the appropriate authority (defined in section 6) to make schemes in respect of a relevant body which is defined in subsection (6). This power might be used if additional functions were conferred on the Agency by means of a direction or order made under the powers in sections 2 and 3. Subsections (7) to (11) enable the appropriate authority to make a scheme to transfer rights and liabilities relating to relevant staff from the Agency, thereby ensuring that their continuity of employment is not broken, if a direction or order under section 2 or 3 is varied or revoked. Subsection (12) introduces Schedule 2, which makes provision in relation to a scheme.

Section 10: Healthcare provision: standards

30. Section 10 makes provision for the Agency to be treated in England and Wales as a body subject to standards set by the Secretary of State in relation to the provision of health care and to inspection by the Commission for Healthcare Audit and Inspection, under Chapters 2, 3 and 10 of Part 2 of the Health and Social Care (Community Health and Standards) Act 2003 (c. 43).

Section 12: commencement

31. Subsection (3) of section 12 provides for the amendment under paragraph 3 of Schedule 3 to come into effect two months after Royal Assent. This amendment to the Immigration Act 1971 (c.77) will enable the Secretary of State for Health to delegate the appointment of medical inspectors under that Act to the National Assembly for Wales, in Wales, and to the Health Protection Agency Special Health Authority, in England. Subsections (1) and (2) provide for the remaining provisions of the Act to be brought into effect by order made by statutory instrument on such day or days as the Secretary of State may appoint, subject to prior consultation with those specified in subsection (4). Subsections (5) to (9) provide order-making powers subject to the procedures described for an appropriate authority to make provision in consequence of the coming into effect of the Act.

Stage	Date	Hansard Reference
House of Lords		
Introduction	27 November 2003	Vol.655, c23-24
Second Reading	5 January 2004	Vol.656, c13-23, 33-54
Committee	3 March 2004	Vol.658, c249-316GC
Report	6 April 2004	Vol.659, c1727-66
Third Reading	29 April 2004	Vol.660, c936-42
House of Commons		
Introduction	29 April 2004	Bill 999 2003-04
Second Reading	21 June 2004	Vol.422, c1097-152
Committee	29 June & 1 July 2004	Standing Committee F, pp.1-88

These notes refer to the Health Protection Agency Act 2004 (c.17)

Report & Third Reading	19 July 2004	Vol.424, c41-71
------------------------	--------------	-----------------

Royal Assent – 22 July 2004	House of Lords Hansard Vol.664, c333
	House of Commons Hansard Vol.424, 514