

# **NHS REDRESS ACT 2006**

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## **EXPLANATORY NOTES**

### **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

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

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.