

HEALTH ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4 – General

Section 37: Power to make transitional and consequential provision etc

358. *Subsection (1)(a)* of section 37 confers on the Secretary of State the power to make transitional or transitory provisions or savings in connection with the coming into force of any provision of the Act. However, *subsection (1)(a)* is limited by the exclusions in *subsection (2)*. *Subsection (3)* provides for appropriate transitional arrangements or savings to be made by the Welsh Ministers. *Subsection (4)* provides for appropriate transitional arrangements or savings to be made by DHSSPSNI. *Subsection (5)* provides that an order under the section may amend any enactment, and *subsection (12)* defines enactment as an enactment in or in an instrument made under a Measure or Act of the National Assembly for Wales or Northern Ireland legislation as well as an Act of Parliament. *Subsection (6)* provides for modifications by order of a provision brought into force to have effect until another provision comes into force.
359. Transitional arrangements are likely to be necessary in relation to commencement of various provisions of the Act, including the provisions for suspension and in relation to tobacco and pharmaceutical services. Through transitional arrangements it will be possible to modify the application of the Act to existing situations and to ensure transition from the old law and procedures to the new.
360. *Subsection (1)(b)* of section 37 also confers on the Secretary of State power by order to make such supplementary, incidental, or consequential provision as the Secretary of State considers appropriate for the purposes of, in consequence of, or for giving full effect to, any provision of the Act. This would, for example, enable amendments to be made to references in legislation to NHS trusts to take into account the possibility created by provisions of the Act of there being a new kind of NHS trust, a de-authorised NHS foundation trust.
361. By *subsection (5) together with subsection (9)(a)* such orders of the Secretary of State may amend, repeal, revoke or otherwise modify any enactment contained in an Act of Parliament in which case they would be subject to approval by each House of Parliament under the affirmative resolution procedure. By *subsection (5) together with subsection (9)(b)* such orders of the Secretary of State, where they amend other legislation will be subject to the negative resolution procedure. The powers are additional to powers in any other provision of the Act.

Section 38: Repeals and revocations

362. *Section 38* introduces Schedule 6, which contains repeals and revocations.

Section 39: Extent

363. **Section 39** makes provision as to the extent of the provisions of the Act. For further information on extent please refer to the Territorial Extent section of these notes.

Section 40: Commencement

364. **Section 40** provides for the coming into force of the provisions of the Act. *Subsection (1)* provides that the Act, with certain exceptions, will come into force on a day appointed in an order made by the Secretary of State by statutory instrument. By *subsection (4)* different days may be appointed for different purposes or different areas.
365. The first exception is that, on the day on which the Act received Royal Assent, 12th November 2009, various provisions came into force by virtue of *subsection (5)*. The provisions are the repeal of section 16(1A) of the 2002 Act (see paragraph 9(2) and (4) of Schedule 4) together with the associated repeals and revocations made by the Act, and Section 40 itself, together with Sections 37 (power to make transitional and consequential provision etc), 39 (extent) and 41 (short title).
366. Secondly, for the purposes of making regulations, the following regulation-making powers also came into force by virtue of *subsection (6)* on the day on which the Act received Royal Assent: the power at section 8 for the Secretary of State to make regulations to disapply the duty to publish quality accounts, those for regulations providing that no offence is committed in relation to a tobacco advertisement by specialist tobacconists in certain circumstances as inserted into the 2002 Act by Section 20, for making provision in relation to tobacco displays as inserted into the 2002 Act by section 21, for prohibiting or imposing requirements in relation to sales of tobacco products from vending machines as inserted into the 1991 Act by section 22, or for restricting sales from vending machines in Northern Ireland as inserted into the 1991 (NI) Order by section 23 and the provisions at paragraphs 11 and 12 of Schedule 4.
367. The third exception is in relation to some of the minor and consequential amendments made in relation to the tobacco provisions in Schedule 4 which are identified at *subsection (7)*. These come into force at the end of the period of two months beginning on the day on which the Act received Royal Assent.
368. *Subsection (8)* provides for the section that introduces a provision of a Schedule mentioned in *subsection (5), (6) or (7)* to come into force for the purposes of the particular provision only.
369. The Welsh Ministers have power by order made by statutory instrument to bring into force on a day appointed by them provisions of the Act which relate to Wales and are identified at *subsection (2)*. Similarly DHSSPSNI has power by order made by statutory rule for the purposes of the [Statutory Rules \(Northern Ireland\) Order 1979 \(S.I. 1979/1573 \(N.I. 12\)\)](#) to bring into force on a day appointed by DHSSPSNI provisions of the Act which relate to Northern Ireland and are identified at *subsection (3)*. These powers at *subsections (2) and (3)* each benefit from the flexibilities provided by *subsection (4)* and respectively constitute further exceptions to the power at *subsection (1)*.
370. Where amendments made by Schedule 3 (introduced by Section 19) relate to bodies operating in Wales, Scotland or Northern Ireland as well as in England, the Secretary of State is obliged to consult the Welsh Ministers, the Scottish Ministers or DHSSPSNI as appropriate before making an order bringing the amendments into force (see *subsections (9), (10) (11) and (12)*).
371. Insofar as the provisions of Schedule 3 relate to amendments to the NHS (Wales) Act, the Welsh Ministers are obliged to consult the Secretary of State before making an order bringing the amendments into force by virtue of *subsection (13)*.

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

Section 41: Short title

372. The short title of the Act is the Health Act 2009.