

*These notes refer to the Health and Social Care Act 2001  
(c.15) which received Royal Assent on 11 May 2001*

# HEALTH AND SOCIAL CARE ACT 2001

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## EXPLANATORY NOTES

### THE ACT

5. The Act is in five parts :

**Part 1** makes changes to the way the NHS, including family health services, is run and funded in England and Wales.

**Part 2** deals with pharmaceutical services in England and Wales and some aspects of such services in Scotland.

**Part 3** provides for the establishment of Care Trusts and for the transfer of staff in connection with partnership arrangements.

**Part 4** makes changes to the way long term care is funded and provided in England and Wales. Provision is also made for Scotland in relation to the ending of preserved rights.

**Part 5** deals with the control of patient information and the extension of prescribing rights as well as various miscellaneous and supplementary provisions.

6. **Part 1** of the Act is mainly concerned with implementing those of the proposals set out in the NHS Plan which require primary legislation. This part of the Act therefore makes a number of changes to the framework of the NHS in England and Wales. *Sections 1 to 5* concern the **funding of the NHS**. *Section 1* enables the Secretary of State and the National Assembly for Wales to take into account the level of a Health Authority's non-cash limited allocation in determining its total allocation. *Section 2* deals with payments to Health Authorities in respect of past performance. *Section 3* enables the Secretary of State and the National Assembly for Wales to make additional **supplementary payments** to support new initiatives and to attach conditions to such payments. *Sections 4 and 5* allow for the extension of **public private partnerships** in the NHS.

7. *Section 6* deals with the powers of the Secretary of State to direct certain NHS bodies about the **terms and conditions of employment** of their staff.

8. *Sections 7 to 12* are intended to strengthen arrangements for **public and patient involvement in the NHS**. *Sections 7 to 10* provide for local authority overview and scrutiny committees to scrutinise the NHS and represent local views on the development of local health services. *Section 11* places a duty on NHS organisations to have arrangements for involving patients and the public in decision making about the operation of the NHS. *Section 12* requires independent advocacy services to be established to assist patients in making complaints about the NHS.

9. *Section 13* allows the Secretary of State to **intervene in poorly performing NHS organisations** .

10. *Sections 14 and 15* provide for new arrangements for Health Authorities to manage the **distribution of General Practitioners**. *Section 17* removes the requirement that remuneration paid to a **General Practitioner** must not, except in special circumstances,

consist wholly or mainly of a salary which has no reference to the number of patients to whom the General Practitioner has undertaken to provide general medical services. [Section 18](#) provides for regulations as to the approval by Health Authorities of providers of **out of hours cover for medical practitioners**.

11. [Sections 19 to 26](#) introduce new arrangements covering the **regulation of family health service practitioners and those performing personal medical services or personal dental services**. All practitioners undertaking to provide family health services (general medical services, general dental services, general ophthalmic services and pharmaceutical services) must currently have their names included in a list maintained by a Health Authority. In future, Health Authorities will be required to maintain lists covering all practitioners, including deputies and locums for their area. Only practitioners included in such lists will be able to deliver family health services. It is intended that the criteria to be admitted to (and to remain on) a list will include probity and positive evidence of good professional behaviour and practice. It is intended that this will be done through a system of declarations, annual appraisal and participation in clinical audit. [Section 20](#) provides a power for Health Authorities to refuse to include a practitioner on the relevant **medical, dental, ophthalmic or pharmaceutical list** on the grounds of unsuitability. [Section 21](#) provides powers to make regulations providing for a person's inclusion in a Health Authority list to be subject to conditions. [Section 22](#) deals with dental corporations and lists. [Section 23](#) requires practitioners to declare financial interests and the acceptance of **gifts or other benefits**. [Section 24](#) provides for Health Authorities to keep **supplementary lists** of deputies and assistants who provide the various family health services (including GPs, dentists and people who provide pharmaceutical and optical services). [Section 25](#) provides for new arrangements for Health Authorities to suspend and remove practitioners from the relevant lists on the grounds of inefficiency, fraud or unsuitability. [Section 26](#) introduces new arrangements to further the Health Authority list system to include those practitioners who may perform personal medical services and personal dental services. [Section 27](#) creates the **Family Health Services Appeal Authority** as an independent body whose functions will include dealing with appeals by these practitioners against Health Authority decisions. Consequently [section 16](#) provides for the **abolition of the NHS Tribunal**.
12. **Part 2** of the Act concerns **pharmaceutical services**. Chapter 1 provides for new arrangements under which community pharmacy and related services may be provided on a pilot basis. The services provided under these arrangements will be known as local pharmaceutical services. [Section 28](#) contains introductory provisions about **pilot schemes** for the provision of local pharmaceutical services. [Section 29](#) and Schedule 2 set out how proposals for a pilot scheme are to be made by a Health Authority and submitted to the relevant authority (the Secretary of State or National Assembly for Wales). [Section 30](#) provides for the designation of neighbourhoods or premises in connection with pilot schemes. [Section 31](#) requires the relevant authority to conduct at least one **review of each pilot scheme** and to comply with certain conditions in doing so. [Section 32](#) gives the relevant authority power to vary or terminate pilot schemes. Health Authorities may vary schemes without referring the matter to the relevant authority only to the extent that they are permitted to do so in directions. [Section 33](#) allows potential providers of local pharmaceutical services to apply to the relevant authority to become health service bodies. One result will be that certain arrangements they make with other health service bodies will be NHS contracts. This section also allows the courts to enforce a direction for payment given by the relevant authority in respect of obligations under such contracts.
13. [Section 34](#) permits regulations to be made to allow Health Authorities to **make payments for preparatory work for pilot schemes**, subject to certain conditions. [Section 35](#) enables **charges corresponding to those for pharmaceutical services** under Part 2 of the National Health Service Act 1977 to be levied for local pharmaceutical services, subject to exemptions. [Section 36](#) specifies that the provisions of the 1977 Act, including the relevant authority's direction-making powers, apply to functions under Part 2 of this Act as though they were functions under Part 1 of the 1977

Act. *Section 37* permits regulations to be made preventing the provision of pilot scheme services from the same premises as pharmaceutical services under Part 2 of the 1977 Act, except as provided in the regulations. It also permits regulations to make provision about the inclusion, re-inclusion, removal and modification of entries in pharmaceutical lists held under Part 2 of that Act. *Section 38* permits regulations to prescribe the extent to which pilot schemes are to be taken into account when considering applications for inclusion in those lists. *Section 39* provides that the relevant authority may only bring the **permanent regime for local pharmaceutical services** into effect where, having regard to reviews of pilot schemes which have been conducted, they are satisfied that it is in the interests of any part of the health service. *Section 40* inserts new provisions into the 1977 Act to enable Health Authorities to make schemes for the provision of local pharmaceutical services in accordance with regulations. *Section 41* provides a power to make further regulations about both the permanent regime and pilot schemes, which correspond to measures in force in relation to personal medical or personal dental services.

14. *Chapter 2* of Part 2 introduces changes to the existing arrangements for the provision of **pharmaceutical services**. *Section 42* substitutes the existing section 41 of the 1977 Act. The new section 41 will require Health Authorities to make arrangements for the supply to persons in their area of those drugs, medicines and listed appliances prescribed for them by medical and other practitioners under the National Health Service. In particular it provides powers for the relevant authority to specify in regulations the categories of person whose prescriptions will be dispensed and any conditions in accordance with which they must prescribe. This section also provides for the arrangements made by Health Authorities to include arrangements for the provision of these pharmaceutical services by remote means.
15. *Section 43* authorises arrangements for the provision of **additional pharmaceutical services by remote means**. The intention is to facilitate, and provide a means to control, the development of internet, mail order, home delivery and other arrangements which may involve dispensing across Health Authority boundaries. This will provide patients with greater flexibility in the way they can present their prescriptions and obtain the drugs or appliances that have been ordered for them. *Section 44* makes provision for items prescribed by certain categories of prescriber to be dispensed as part of NHS community pharmaceutical services in Scotland.
16. **Part 3** of the Act creates new powers to establish **Care Trusts** by building on existing health and local authority powers to forge partnerships and provide integrated care. *Section 45* provides for Care Trusts to be established voluntarily. Where services are failing *section 46* provides for the Secretary of State or the National Assembly for Wales to direct the local partners to enter into partnership arrangements. *Section 48* concerns the transfer of staff in connection with partnership arrangements.
17. **Part 4** of the Act changes the way long term care is funded and provided in England and Wales. *Section 49* excludes nursing care from community care services. *Sections 50 to 52* make local authorities responsible for arranging and meeting the care needs of people who have until now had their **long term care** funded through **preserved rights** to income support and jobseeker's allowance. *Sections 53 to 55* extend the powers of **local authorities to place a charge on an interest in land** as an alternative method of a person financing their long term care. They also provide for regulations to specify when a local authority is required to provide residential accommodation and when additional payments may be made for more expensive accommodation. *Section 56* deals with new arrangements for **cross border placements**. Regulations will give local authorities in England and Wales powers to place people in residential care homes and nursing homes in Scotland, Northern Ireland, the Isle of Man and the Channel Islands. *Sections 57 and 58* give regulation-making powers to the Secretary of State concerning direct payments.
18. **Part 5** deals with the control of patient information and the extension of prescribing rights as well as various miscellaneous and supplementary provisions. *Section 60*

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concerns the **control of patient information**. It enables the Secretary of State to require or permit patient information to be shared for medical purposes where he considers that this is in the interests of improving patient care or in the public interest. *Section 61* provides for the establishment of a statutory committee that is to be consulted about regulations to be made under *section 60*. *Section 62* requires the Secretary of State to produce **separate annual reports on the development of services for people with mental illness and people with learning disability**. *Section 63* makes provision for the **extension of prescribing rights** to health professionals other than doctors, dentists and certain specified nurses, health visitors and midwives who already have prescribing rights. This part also includes a number of supplementary provisions.

19. Annex A contains an outline of the existing legislation relating to the NHS. Annex B contains an outline of the existing legislation relating to social care. Annex C deals with miscellaneous relevant legislation. In general, functions of the Secretary of State under the existing legislation are exercisable by the National Assembly for Wales in relation to Wales by virtue of a Transfer of Functions Order made in 1999. The Act reflects this when amending existing legislation, i.e. functions are conferred just on the Secretary of State. *Section 68* will ensure that such functions will be exercisable for Wales by the National Assembly for Wales. Many of the functions under this Act are conferred on “the relevant authority”, which is defined by *section 66* to mean the Secretary of State in relation to England, the National Assembly for Wales in relation to Wales and the Scottish Ministers in relation to Scotland.