

These notes refer to the National Health Service Reform and Health Care Professions Act 2002 (c.17) which received Royal Assent on 25 June 2002

NATIONAL HEALTH SERVICE REFORM AND HEALTH CARE PROFESSIONS ACT 2002

EXPLANATORY NOTES

SUMMARY

3. In July 2000 the Government published *The NHS Plan: A plan for investment, A plan for reform*¹, in which was set out a ten-year plan for the reform of the health service in England. Action has since been taken to implement many of the proposals set out in that document. Many of the legislative proposals were given effect through the Health and Social Care Act 2001 (“the HSC Act”).
4. In summer 2001, the Government elaborated on key proposals from the NHS Plan in published documents: *Shifting the Balance of Power within the NHS - Securing Delivery*² and *Involving Patients and the Public in Healthcare*³. This Act takes forward those of the proposals which required primary legislation.
5. In July 2001, the Report of the Bristol Royal Infirmary Inquiry⁴ was published. It made a number of recommendations including some requiring legislation. A full Government Response to the Report⁵ was published on 17 January 2002. This Act provides for change in relation to two of the areas covered in the Report: the role of the Commission for Health Improvement (“CHI”), and the regulation of the health care professions. Regarding the latter, the Government’s proposals were published in August 2001 in the consultation document *Modernising Regulation in the Health Professions*⁶.
6. The document *Improving Health in Wales*⁷, published by the National Assembly for Wales (“the Assembly”) in February 2001, signalled the intention to abolish the existing five Health Authorities (“HAs”) in Wales on 31st March 2003 and extend and develop the role of the existing Local Health Groups which were established in April 1999 as sub-committees of the HAs to implement health improvement and local action plans through effective partnership working with local organisations and the public. The document envisaged the creation of Local Health Boards (“LHBs”) to which the Assembly could delegate the functions of HAs in Wales once they had been abolished.
7. The Act provides for amendment of the structural framework of the health service in England and separately in Wales (see below). It provides, in relation to England, for HAs to be renamed as Strategic Health Authorities. It also provides for most of the functions of HAs to be conferred instead on Primary Care Trusts (“PCTs”), and for health service resources to be allocated directly to PCTs by the Secretary of State. Service planning will in future be undertaken by PCTs, with Strategic Health

¹ For copies: - postal address: PO Box 777, London SE1 6XH. Website address: <http://www.doh.gov.uk/nhsplan/default.htm>

² For copies: - postal address: PO Box 777, London SE1 6XH. Website address: <http://www.doh.gov.uk/shiftingthebalance/index.htm>

³ For copies: - postal address: PO Box 777, London SE1 6XH. Website: <http://www.doh.gov.uk/involvingpatients/index.htm>

⁴ For copies: - postal address: PO Box 29, Norwich, NR3 1GN. Telephone: 0845 7 023474

⁵ For copies: - postal address: PO Box 29, Norwich, NR3 1GN. Telephone: 0845 7 023474. Website address: <http://www.doh.gov.uk/bristolinquiryresponse/index.htm>

⁶ For copies: - postal address: PO Box 777, London SE1 6XH. Website address: <http://www.doh.gov.uk/modernisingregulation/index.htm>

⁷ For copies: - telephone: 029 2080 1032. Website address: <http://www.wales.nhs.uk/publications/NHSSStrategydoc.pdf>

Authorities providing the performance management function for the health services provided within their boundaries.

8. In relation to Wales, the Act provides for the creation, functions and funding of LHBs, in effect extending the current role of Local Health Groups. The Act places a duty on each LHB and each Local Authority in Wales to formulate and implement a 'health and well-being strategy' for the population in the area, and to have regard to the strategy in exercising their functions. The Act also empowers the Assembly to make regulations imposing a duty on LHBs and Local Authorities to co-operate with other persons and organisations in formulating their strategy. These other bodies may include NHS trusts, Community Health Councils ("CHCs"), voluntary bodies and local businesses.
9. The Act provides for new arrangements to strengthen CHI and its independence. CHI was established by the Health Act 1999 ("the Health Act") to carry out independent reviews of the arrangements for monitoring and improving the quality of health care by NHS bodies and other NHS service providers. The Act makes it clear that the definition of 'health care' extends to the patient environment. It provides for CHI to inspect and report on NHS services, and that CHI may recommend to the Secretary of State that special measures should be taken where services are of unacceptably poor quality or there are significant failings in the way a body providing NHS services is being run. The Act enables CHI to discharge certain of its functions in relation to the collection and analysis of data and performance assessment through what will be known as the Office for Information on Health Care Performance. The Act provides for CHI to appoint its own chief executive and requires CHI to make an annual report on the quality of NHS services, which the Secretary of State must lay before Parliament.
10. The Act provides for the creation of an independent 'Patients' Forum' for every NHS trust and PCT in England, to perform an inspection, monitoring and representation role on behalf of patients and the public. Patients' Forums established in respect of PCTs ("PCT Patients' Forums") will have additional functions to provide information and advice to members of the public, to engender and promote the involvement of the public in local decisions that affect their health, and to advise other local bodies on how to involve the public. PCT Patients' Forums will also commission and provide Independent Advocacy Services. The Act establishes the Commission for Patient and Public Involvement in Health ("CPPIH") to report to the Secretary of State on how public and patient involvement mechanisms are working, and to conduct annual reviews of key issues arising from the work of Patients' Forums. CPPIH will set quality standards for and performance manage Patients' Forums and Independent Advocacy Services. The Act also provides for the abolition of CHCs in England and the Association of Community Health Councils for England and Wales ("ACHCEW").
11. In addition, the Act establishes a duty of partnership between NHS bodies and - through the Home Secretary - the prison service, to work together in carrying out their functions as they relate to health services for prisoners. It also makes provision to enable the NHS and the prison service to work together to fulfil their functions more effectively, mirroring the joint working arrangements that already exist, under section 31 of the Health Act, between NHS bodies and Local Authorities. Under these provisions, prisons and their local NHS partners will - subject to approval by the Secretary of State - be able to pool funding for health services for prisoners, and prisons will be able to make arrangements to delegate health care functions to NHS bodies (and vice versa).
12. The Act creates a Council for the Regulation of Health Care Professionals ("the Council") to oversee the activities of the various regulatory bodies of the health care professions. It provides for the Council to co-ordinate good practice guidelines and other aspects of the regulatory bodies' work, and for it to encourage the regulatory bodies to act in the interests of patients. Specifically, the Council will oversee the General Medical Council; the General Dental Council; the General Optical Council; the General Osteopathic Council; the General Chiropractic Council; the Royal Pharmaceutical Society of Great Britain; the Pharmaceutical Society of Northern

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Ireland; the Nursing and Midwifery Council and the Health Professions Council⁸. The Act provides for the Council to have the right of appeal in cases determining a practitioner's fitness to practise or examining whether there has been an instance of professional misconduct where it would be desirable for the protection of members of the public.

13. The Act also deals with other aspects of the regulation of health care professionals. It provides for appeal cases in relation to 'fitness to practise' issues to be transferred from the Judicial Committee of the Privy Council to the High Court (and its Scottish and Northern Irish equivalents) in respect of those professions where this is not already the case. This will bring consistency in these procedures across all the professions. A further provision extends the powers conferred by section 60 of the Health Act (which deals with the modification of legislation governing the regulation of health care professions) to bring those powers in respect of the pharmacy profession more into line with the other health care professions.

⁸ The Nursing and Midwifery Council and the Health Professions Council are bodies set up by orders made in the Health Act and succeed the UK Central Council for Nursing, Midwifery and Health Visiting and the Council for Professions Supplementary to Medicine