

NATIONAL HEALTH SERVICE REFORM AND HEALTH CARE PROFESSIONS ACT 2002

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3: Miscellaneous

Section 36: Amendments of health service legislation in connection with consolidation

183. *Section 36* enables the Secretary of State to amend legislation relating to the health service in England and Wales by order if he thinks that such amendment will assist the consolidation of that legislation. Amendments made under the Order will form part of consolidating legislation. *Section 38(3)* provides for such orders to be subject to affirmative resolution.

Section 38: Regulations and orders

184. *Section 38* makes provision about the making of orders, regulations and directions under the Act. It provides that all orders and regulations (except those under *section 22(5)* – orders making provision for the transfer of rights, liabilities etc. on or after the abolition of a CHC or ACHCEW) shall be exercised by statutory instrument, sets out the parliamentary procedures relating to statutory instruments and how the powers in question may be exercised. All orders and regulations are subject to the negative resolution procedure except for regulations relating to complaints about regulatory bodies (*section 28*), orders relating to the coming into force of directions under *section 27* and orders made in connection with consolidation of health service legislation (*section 36*). Commencement orders under *section 42(3)* are not subject to any Parliamentary procedure. *Subsection (10)* provides that except where otherwise stated, directions are to be given by instrument in writing.

Section 39: Supplementary and consequential provision etc

185. *Section 39(1)* and *(2)* enable the Secretary of State by regulations to make such supplementary, incidental or consequential provision, or such transitory, transitional or saving provision, as he considers necessary to give full effect to the Act. This includes power to amend or repeal any enactment, instrument or document. This would enable regulations to be made, for instance, to ensure a smooth transition from HAs to Strategic Health Authorities in England.
186. *Subsection (3)* provides that such regulations may also be made by the Assembly in respect of devolved matters.

Section 40: Wales

187. *Section 40* provides that in the National Assembly for Wales (Transfer of Functions) Order 1999 any reference to an Act amended by this Act is to be treated as a reference to that Act as amended.

Section 41: Financial Provisions

188. *Section 41* provides for expenditure relating to the Act to be paid out of money provided by Parliament.

Section 42: Short title, interpretation, commencement and extent

189. *Section 42* gives the short title of the Act and makes provisions for commencement and extent. It provides that all sections of the Act will be brought into force by order made by statutory instrument except *sections 38 to 41* and those conferring order or regulation-making powers on the Secretary of State which will come into force on Royal Assent. *Subsections (2) and (4)* also contain definitions of certain terms used in the Act.

Note on drafting assumptions

190. There are a number of points at which this Act amends provisions of the 1977 Act which have already been amended by the Health Act or the HSC Act. Not all of the relevant amendments, however, have yet been brought into force. For the purposes of this Act, the following method of dealing with such amended provisions has been adopted:
191. Where it is known that the amendment **will not** have been brought into force before this Act receives Royal Assent, then this Act amends the amending provision in the HSC Act and the Health Act. This applies, for example, in the case of the amendments to section 10 of the Health Act in *paragraph 68* of *Schedule 2* and the amendments to section 40 and Schedule 3 to the HSC Act in *paragraphs 78* and *81* of *Schedule 2*.
192. Where it is known that the amendment **will** have been brought into force before this Act receives Royal Assent, then this Act amends the 1977 Act as amended. This applies, for example, in the case of the amendments to section 97 of the 1977 Act (as amended by sections 1 and 2 of the HSC Act) made by *section 7* of the Act.
193. Where, at the time of drafting, it was not yet clear whether the amendments would have been brought into force before this Act receives Royal Assent, then this Act also amends the 1977 Act as amended rather than the amending provision. This applies, for example, in the case of the amendments to section 29B of the 1977 Act (as amended by section 15 of the HSC Act) made by *paragraph 5* of *Schedule 2* to the Act. In these cases, where the relevant amendments have not in fact been brought into force at Royal Assent, commencement orders for the two sets of amending provisions will be arranged so that any amendments made by the earlier Act which are further amended by this Act are brought into force before those further amendments. These further amendments should then be taken as applying to the text of the 1977 Act as it stood at the date of their commencement.