These notes refer to the Health and Social Care Act 2012 (c.7) which received Royal Assent on 27 March 2012

HEALTH AND SOCIAL CARE ACT 2012

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 – Further provision about public health

Section 56 – Abolition of Health Protection Agency

620. This section abolishes the Health Protection Agency (HPA) and repeals the Health Protection Agency Act 2004. This is part of a process of reforming the systems for protecting and improving public health. New sections 2A and 2B of the NHS Act 2006, inserted by sections 11 and 12 of this Act, confer on the Secretary of State and certain local authorities duties and powers relating to public health and specify examples of steps that may be appropriate under those duties. The section also introduces Schedule 7 to the Act, which makes amendments to other legislation which are consequential on the HPA's abolition. *Subsection (3)* provides that the repeal of the HPA Act 2004 does not include the amendment made by that Act to Schedule 2 to the Immigration Act 1971, which relates to the appointment of medical inspectors.

Schedule 7 – Part 1: amendments of other enactments

621. This Schedule makes a number of amendments to other Acts which are consequential on the HPA's abolition. More detail about certain of these is given below.

Act	*Amendment*
Health and Safety at Work etc. Act 1974 (c.37)	Section 16 (approval of codes of practice) states that the Health and Safety Executive shall not approve a code of practice under subsection (1) without the consent of the Secretary of State and shall before seeking his consent consult appropriate government departments and the HPA in particular in the case of a code relating to electromagnetic radiations. The amendment deletes the references to the HPA and the specific reference to electromagnetic radiations.
National Immigration and Asylum Act 2002 (c.41)	The amendments change references in section 133(4) of the Nationality, Immigration and Asylum Act 2002 (power of medical inspector to disclose information to health service bodies). • Paragraph (a) is amended to the replace the reference to the HPA with a reference to the Secretary of State in relation to England. • Paragraph (b) is amended to remove the reference to the HPA in relation to Wales. • Paragraph (c) is amended to the replace the reference to the HPA with a reference to the Secretary of State in relation to Scotland.

Act	***Amendment***
	• Paragraph (d) in relation to Northern Ireland is amended to remove the reference to the HPA and insert a reference to the Regional Agency for Public Health and Social Well-being established under section 12 of the Health and Social Care (Reform) Act (Northern Ireland) 2009.
Civil Contingencies Act 2004 (c.36)	The amendment, by substituting Paragraph 9 of Part 1 of Schedule 1 (Category 1 responders), removes references to the HPA and inserts references to the Secretary of State as regards his functions concerning responding to emergencies by virtue of – a) The Secretary of State's functions under section 2A of the National Health Service Act 2006, b) the Secretary of State's functions under section 57 of the Health and Social Care Act 2012 in so far as it applies in relation to Wales or Scotland, or c) arrangements made by the Welsh Ministers or Scottish Ministers under which the Secretary of State exercises on their behalf functions in relation to protecting the public in Wales or Scotland from disease or other dangers to health.

Section 57 - Functions in relation to biological substances

622. This section confers on the Secretary of State new UK-wide functions in relation to biological substances (see *subsection (8)* for the definition of 'biological substances'). These are functions previously carried out by the HPA. Functions relating to biological substances include standardising and controlling biological medicines like vaccines or blood products to ensure their safety and effectiveness.

623. *Subsection (1)* imposes a number of specific duties on the Secretary of State and the Department of Health, Social Services and Public Safety in Northern Ireland (DHSSPS) acting alone or both of them acting jointly in relation to biological substances. *Subsection (7)* provides the definition of 'appropriate authority'.

624. *Subsection (2)* provides the Secretary of State and the DHSSPS with general powers by which their functions in relation to biological substances may be discharged.

625. *Subsections (3) to (5)* provide for a reciprocal duty of co-operation between the Secretary of State and DHSSPS on the one hand and any person or body exercising biological substances functions similar to those of the Secretary of State and the DHSSPS on the other. The duty of co-operation applies irrespective of whether those functions are exercised in relation to the UK or overseas.

626. *Subsection (6)* empowers the Secretary of State and the DHSSPS to charge for their activities in relation to biological substances, including on a commercial basis.

Section 58 – Radiation protection functions

627. This section confers functions on the Secretary of State in relation to protecting the public from radiation. These are functions previously carried out by the HPA.

628. This section applies in relation to Wales, Scotland and Northern Ireland. It does not apply in relation to England (see *subsection (10)*). Provision for protecting the public in England from radiation is made in new section 2A of the NHS Act 2006 (Secretary of State's duty as to protection of public health), as inserted by section 11.

629. *Subsection (1)* imposes a general duty in relation to protecting the public from radiation on the 'appropriate authority'. Under *subsections (8) and (9)* the appropriate authority in relation to Wales is the Secretary of State; the appropriate authority in relation to Scotland is the Secretary of State where the matter is not devolved and the Scottish Ministers where the matter is; and the appropriate authority in relation to Northern Ireland is the Secretary of State where the matter is not devolved and the DHSSPS in Northern Ireland where it is.

630. *Subsection (2)* specifies some of the steps an appropriate authority may take to protect the public against radiation, in compliance with the duty under subsection (1).

631. *Subsection (3)* provides the appropriate authority with a general power to do things which it considers appropriate to facilitate the discharge of the duty under subsection (1) or which is incidental or conducive to it.

632. *Subsection (4)* enables the appropriate authority to charge for its activities in relation to radiation protection, including on a commercial basis.

633. *Subsections (5) and (6)* require the appropriate authority to consult the Health and Safety Executive or the Health and Safety Executive for Northern Ireland and have regard to its policies when taking steps in relation to a matter concerning radiation in respect of which either Executive also has a function.

Section 59 – Repeal of AIDS (Control) Act 1987

634. This section repeals the AIDS (Control) Act 1987. The Act concerns the collection of information about numbers of HIV cases and deaths, but for some time, laboratories and clinics have voluntarily reported more accurate and relevant data than the Act calls for. As a result, the Department of Health has not used the Act for several years and now regards it as redundant.

635. The AIDS (Control) (Northern Ireland) Order 1987 is also revoked.

Section 60 - Co-operation with bodies exercising functions in relation to public health

636. This section inserts a new section 247B into the NHS Act 2006. New section 247B imposes a duty of co-operation on all individuals or organisations who carry out health protection functions similar to those of the Secretary of State under new section 2A of the NHS Act. They must co-operate with the Secretary of State, and in turn he must co-operate with them.

637. This could include circumstances when the Secretary of State's activity takes place overseas and co-operation between the Secretary of State and other organisations is required. The intention is to make sure that the system works in a co-ordinated and coherent way to deal with threats to public health. Subsection (2) of new section 247B provides for co-operation between the devolved administrations in Scotland, Wales and Northern Ireland and the Secretary of State.

638. Under subsections (3) and (5) of new section 247B, the Secretary of State and individuals or organisations would be able to charge for the costs of their co-operation, on a costs recovery basis, when co-operation is requested.