

CONSOLIDATION OF NHS LAW IN ENGLAND AND WALES

With reference to the draft Bills for consolidation of NHS Law, this note sets out:

- the purpose of the consolidation;
- the need for separate Bills for England and Wales;
- the nature of the amendments;
- who to contact should you require further information.

Why we need consolidation of NHS law

The many amendments to the legislative foundation of the NHS – the NHS Act 1977 – leave the law very complex and inaccessible. To remedy the risk of misunderstanding and errors in relation to the law, Ministers agreed in 2002 that the Law Commission should undertake the law reform exercise of consolidation.

What consolidation means

In areas of law where there have been a significant number of Acts over a period of time, the Law Commission may recommend a Consolidation Bill, to bring all the relevant provisions into a single Act. Minor changes which make absolutely no change in the substance can be made as part of the drafting. There is also some limited scope for amendments but only where amendments are designed to facilitate or are otherwise desirable in the context of the consolidation. Such amendments have to be made by affirmative statutory instrument – a pre-consolidation order. The consolidation therefore will make no substantial changes in the law. The statutes will be re-ordered and inconsistencies in the legislation removed, and using a pre-consolidation amendment order, obsolete provisions will be repealed.

Why we need separate Bills for England and Wales

The Law Commission has drafted two Bills to separate provision about the health service in Wales from that in England. This reflects situations such as: the transfer of functions of the Secretary of State to the National Assembly for Wales; the creation of Local Health Boards in Wales; the creation of Strategic Health Authorities, Primary Care Trusts and NHS Foundation Trusts in England; the retention of Community Health Councils in Wales and certain different methods in the provision of health care. Health law in England and Wales now diverges in so many respects that one Act covering both would be neither concise nor comprehensible to users of the legislation. A separate Bill for Wales has no constitutional implications; it does not affect the position of the Assembly, which currently has no primary law making powers and the Bills do not substantively change the law

The nature of the amendments

The Consolidation is primarily one of the structure and operation of the NHS. It will include most but not all of health legislation since 1977. Therefore, the NHS Act 1977 and much of the subsequent legislation will be repealed and replaced. However, the new statute will not include some of the more recent legislation about quality and standards where either there is an overlap with social care functions or bodies, nor will it include the law on the regulation of the healthcare professions.

The Acts affected by Consolidation are as follows: Health and Social Care (Community Health and Standards) Act 2003; National Health Service Reform and

Health Care Professions Act 2002; Health and Social Care Act 2001; Health Act 1999; National Health Service (Private Finance) Act 1997; National Health Service (Primary Care) Act 1997; National Health Service (Residual Liabilities) Act 1996; Health Authorities Act 1995; National Health Service and Community Care Act 1990; Health and Medicines Act 1988; Hospital Complaints Procedure Act 1985; Health and Social Security Act 1984, Health Services and Public Health Act 1968, and the Ministry of Health Act 1919.

More information

Should you require further information, please contact:

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