

Health Protection Agency Bill [HL]

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Department of Health, will be published separately as Bill 99 – EN.

EUROPEAN CONVENTION ON HUMAN RIGHTS

Mr Secretary Reid has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Health Protection Agency Bill [HL] are compatible with the Convention rights.

Health Protection Agency Bill [HL]

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- Schedule 1 – Health Protection Agency
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[NOTE: The words marked in bold type were inserted by the Lords to avoid questions of privilege.]

A

B I L L

TO

Establish the Health Protection Agency and make provision as to its functions.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Health Protection Agency

- (1) There shall be a body corporate to be known as the Health Protection Agency, or in Welsh Yr Asiantaeth Diogelu Iechyd, (in this Act referred to as the Agency).
- (2) Schedule 1 has effect in relation to the Agency. 5

2 Health functions

- (1) The Agency has the following functions in relation to health—
 - (a) the protection of the community (or any part of the community) against infectious disease and other dangers to health;
 - (b) the prevention of the spread of infectious disease; 10
 - (c) the provision of assistance to any other person who exercises functions in relation to the matters mentioned in paragraphs (a) and (b).
- (2) The Agency also has such other functions in relation to health as—
 - (a) the Secretary of State (after consultation with the National Assembly for Wales) directs; 15
 - (b) the National Assembly (after consultation with the Secretary of State) directs.
- (3) The Secretary of State may (after consultation with the National Assembly) direct the Agency to exercise any function conferred on him by or under an enactment. 20
- (4) The National Assembly may (after consultation with the Secretary of State) direct the Agency to exercise any function conferred on it by or under an enactment.

- (5) The giving of a direction under subsection (3) or (4) does not –
- (a) transfer the function to the Agency;
 - (b) prevent the exercise of the function by the Secretary of State or the National Assembly (as the case may be).
- (6) Subsection (1) does not apply to a function to the extent that it – 5
- (a) is exercisable within devolved competence (within the meaning of the Scotland Act 1998 (c. 46));
 - (b) relates to a transferred matter (within the meaning of section 4(1) of the Northern Ireland Act 1998 (c. 47)).
- (7) The Scottish Ministers may by order confer on the Agency a function of any description falling within subsection (1) to the extent that it is exercisable within devolved competence. 10
- (8) An order under subsection (7) must not be made –
- (a) for the purpose of conferring a function unless the Scottish Ministers have obtained the agreement of the Secretary of State; 15
 - (b) for the purpose of removing a function unless the Scottish Ministers have consulted the Secretary of State.
- (9) An order under subsection (7) must be made by statutory instrument subject to annulment by a resolution of the Scottish Parliament.
- (10) The Department of Health, Social Services and Public Safety in Northern Ireland may by order confer on the Agency a function of any description falling within subsection (1) to the extent that it is exercisable for the purposes of a transferred matter. 20
- (11) An order under subsection (10) must not be made –
- (a) for the purpose of conferring a function unless the Department has obtained the agreement of the Secretary of State; 25
 - (b) for the purpose of removing a function unless the Department has consulted the Secretary of State.
- (12) An order under subsection (10) must be made by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)) subject to negative resolution (within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.))). 30

3 Radiation protection functions

- (1) The Agency has the following functions in relation to risks connected with radiation (whether ionising or not) – 35
- (a) the advancement of the acquisition of knowledge about protection from such risks;
 - (b) the provision of information and advice in relation to the protection of the community (or any part of the community) from such risks.
- (2) The Agency must also exercise such of the functions which are exercisable at the date of commencement of this section by the National Radiological Protection Board as are specified in a direction given by the appropriate authority. 40
- (3) The appropriate authority may direct the Agency to exercise any other function in relation to protection from the risks mentioned in subsection (1). 45

- (4) If a Health and Safety body asks the Agency to enter into an agreement with the body for the Agency to carry out any of the body's functions relating to radiation (whether ionising or not) on the body's behalf, the appropriate authority may direct the Agency to do so.
- (5) In the exercise of any function it has under this section which relates to any matter in respect of which a Health and Safety body has a function the Agency must— 5
- (a) consult the body;
 - (b) have regard to the body's policies.
- (6) A direction under this section must not be given unless the person giving the direction has consulted each of the other persons mentioned in section 6. 10
- (7) Each of the following is a Health and Safety body—
- (a) the Health and Safety Commission in relation to Great Britain;
 - (b) the Health and Safety Executive for Northern Ireland.
- (8) The giving of a direction under subsection (2) or (3) does not— 15
- (a) transfer the function to the Agency;
 - (b) prevent the exercise of the function by the appropriate authority.

4 Functions: supplementary

- (1) For the purpose of the exercise of its functions the Agency may do any of the following— 20
- (a) engage in or commission research;
 - (b) obtain and analyse data and other information;
 - (c) provide laboratory services;
 - (d) provide other technical and clinical services;
 - (e) provide training in relation to matters in respect of which the Agency has functions; 25
 - (f) make available to any other body such persons, materials and facilities as it thinks appropriate;
 - (g) provide information and advice.
- (2) The Agency may do anything which it thinks is— 30
- (a) appropriate for facilitating, or
 - (b) incidental or conducive to,
- the exercise of its functions.
- (3) The power under subsection (2) includes power— 35
- (a) to acquire by agreement or dispose of land and other property;
 - (b) to form or participate in the formation of companies;
 - (c) to enter into contracts;
 - (d) to acquire, produce, manufacture and supply goods;
 - (e) to develop and exploit ideas and exploit intellectual property;
 - (f) to provide accommodation. 40
- (4) The Agency may make charges in respect of anything done in pursuance of its functions.
- (5) The Agency is to be treated—

- (a) for the purposes of section 28A of the National Health Service Act 1977 (c. 49) (power of certain health bodies to make payments to local authorities in respect of the performance of functions) (except subsection (2) of that section) as if it is a body to which that section applies; 5
- (b) for the purposes of section 28BB of that Act (power of local authorities to make payments to certain NHS bodies in respect of the performance of functions) as if it is a relevant NHS body within the meaning of that section;
- (c) for the purposes of section 31 of the Health Act 1999 (c. 8) (power to enable arrangements to be made between certain NHS bodies and local authorities for the performance of certain of their functions) as if it is an NHS body within the meaning of that section; 10
- (d) for the purposes of sections 13 (payments by NHS bodies towards certain local authority expenditure) and 14 (payments by local authorities towards expenditure by NHS bodies on prescribed functions) of the Community Care and Health (Scotland) Act 2002 (asp 5) as if it is an NHS body within the meaning of that Act; 15
- (e) for the purposes of section 15 of that Act (delegation etc. between local authorities and NHS bodies) as if it is an NHS body within the meaning of that Act. 20
- (6) The Agency must exercise its functions efficiently and cost-effectively.
- (7) The appropriate authority may direct the Agency to have regard, in exercising any of its functions, to such aspects of the policy of the authority as the authority directs. 25
- (8) The Agency must comply with any direction under subsection (7).
- (9) If the appropriate authority thinks that the Agency is to a significant extent—
 (a) failing to discharge any of its functions, or
 (b) failing to discharge any of its functions properly,
 it may (after relevant consultation) give the Agency such a direction as it thinks appropriate for remedying that failure. 30
- (10) If the Agency fails to comply or unreasonably delays in complying with a direction under subsection (9) the appropriate authority may, instead of the Agency, take such action as it thinks appropriate to remedy the failure.
- (11) The disclosure of information to or by the Agency for the purposes of the exercise of a function which is the subject of an arrangement made by virtue of subsection (5)(c) or (e) or in pursuance of a duty of co-operation under section 5 does not breach any restriction on the disclosure of information (however imposed). 35
- (12) But subsection (11) does not authorise a disclosure of information which contravenes the Data Protection Act 1998 (c. 29). 40
- (13) Relevant consultation is consultation by the appropriate authority giving the direction with each of the persons mentioned in section 6 (if that person is not the authority) to the extent that the authority thinks that the exercise by the person of any function he has is likely to be affected in consequence of the giving of the direction. 45

5 Co-operation

- (1) In the exercise of its functions the Agency must co-operate with other bodies which exercise functions relating to health or any other matter in relation to which the Agency also exercises functions.
- (2) A body other than the Agency mentioned in subsection (1) must co-operate with the Agency in the exercise by the body of any such function it has. 5
- (3) In subsection (1) the reference to other bodies includes bodies established outside the United Kingdom.

6 Appropriate authority

- (1) Except as otherwise provided for in this section the appropriate authority is the Secretary of State. 10
- (2) In relation to any function which is exercisable in relation to Wales by the National Assembly for Wales acting alone, the appropriate authority is the National Assembly.
- (3) In relation to any function which is exercisable for the purposes of a transferred matter (within the meaning of section 4(1) of the Northern Ireland Act 1998 (c. 47)), the appropriate authority is the Department of Health, Social Services and Public Safety in Northern Ireland. 15
- (4) In relation to any function which is exercisable within devolved competence (within the meaning of the Scotland Act 1998 (c. 46)), the appropriate authority is the Scottish Ministers. 20
- (5) In relation to any function which is exercisable in relation to any part of the United Kingdom by more than one of the persons mentioned in subsections (1) to (4), the appropriate authority is both or all (as the case may be) of those persons acting jointly. 25

7 Publication of information

- (1) The Agency may publish in such manner as it thinks appropriate –
 - (a) information it obtains from any source;
 - (b) advice it provides to any person.
- (2) But the Agency must not publish any matter – 30
 - (a) which contravenes the Data Protection Act 1998 (c. 29);
 - (b) in contravention of an express restriction contained in any other enactment on the publication of the matter;
 - (c) if the publication is not in the public interest.
- (3) Enactment includes – 35
 - (a) any provision of or instrument made under an Act of the Scottish Parliament;
 - (b) Northern Ireland legislation.

8 Transfer of property and staff etc.

- (1) The Secretary of State may make a scheme for the transfer of property, rights and liabilities of the bodies mentioned in subsection (2) to the Agency. 40

- (2) These are the bodies –
- (a) the Special Health Authority known as the Health Protection Agency established by the Health Protection Agency (Yr Asiantaeth Diogelu Iechyd) (Establishment) Order 2003 (S.I. 2003/505);
 - (b) the National Radiological Protection Board. 5
- (3) The Secretary of State must not make a scheme in respect of the body mentioned in subsection (2)(a) unless he first consults the National Assembly for Wales.
- (4) The Secretary of State must not make a scheme in respect of the body mentioned in subsection (2)(b) unless he first consults – 10
- (a) the Scottish Ministers;
 - (b) the Department of Health, Social Services and Public Safety in Northern Ireland;
 - (c) the National Assembly for Wales.
- (5) The appropriate authority may make a scheme for the transfer of property, rights and liabilities of a relevant body to the Agency. 15
- (6) A relevant body is a body –
- (a) established otherwise than by or under any enactment,
 - (b) all of the functions of which are conferred on the Agency in pursuance of a direction or order under this Act, and 20
 - (c) which is specified in a scheme.
- (7) If the appropriate authority varies or revokes a direction or order under section 2 or 3, it may make a scheme for the transfer of the rights and liabilities of the Agency specified in subsection (8) to a relevant transferee.
- (8) The rights and liabilities are the rights and liabilities relating to the contract of employment of any individual whose employment, in the opinion of the appropriate authority, relates wholly or principally to the Agency’s exercise of a removed function. 25
- (9) A removed function is a function which is the subject of the direction or order which the appropriate authority varies or revokes. 30
- (10) A relevant transferee is an entity which, following the variation or revocation of the direction or order, is to exercise the removed function.
- (11) The appropriate authority must not make a scheme under subsection (7) unless it first consults, in respect of the scheme, each person or body that it must consult in respect of the variation or revocation of the direction or order under section 2 or 3. 35
- (12) Schedule 2 makes provision in relation to a scheme under this section.
- (13) Enactment includes –
- (a) any provision of or instrument made under an Act of the Scottish Parliament;
 - (b) Northern Ireland legislation. 40

9 Directions

- (1) A direction –
- (a) must be given in writing;

- (b) may be varied by a subsequent such direction.
- (2) A direction under section 2(2), (3) or (4) must be given in regulations made by statutory instrument.
- (3) A statutory instrument making regulations giving a direction under section 2(2)(a) or (3) is subject to annulment in pursuance of a resolution of either House of Parliament. 5
- 10 Health care provision: standards**
- (1) In so far as any health care is provided by or for the Agency it is to be treated for the purposes of the standards provisions as an English NHS body.
- (2) Health care must be construed in accordance with section 45 of the Health and Social Care (Community Health and Standards) Act 2003. 10
- (3) The standards provisions are Chapters 2, 3 and 10 of Part 2 of that Act.
- (4) The references in section 53 of that Act (failings of bodies) to special measures are, in relation to the Agency, references to anything that may be done by the appropriate authority in pursuance of section 4 above. 15
- (5) Section 57 of that Act (studies as to economy and efficiency, etc.) does not apply to the Agency.
- (6) This section does not extend to Scotland and Northern Ireland.
- 11 Amendments and repeals**
- (1) Schedule 3 contains amendments. 20
- (2) Schedule 4 contains repeals.
- (3) A reference in Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) to an enactment amended by Schedule 3 below must be taken to be a reference to the enactment as so amended.
- 12 Commencement** 25
- (1) Except as provided in subsection (3) the preceding provisions of this Act come into force on such day as the Secretary of State may by order made by statutory instrument appoint.
- (2) Different days may be appointed for different purposes.
- (3) Paragraph 3 of Schedule 3 comes into force two months after the day on which this Act is passed. 30
- (4) The Secretary of State must not make an order under subsection (1) for the purposes of section 1 unless he first consults –
- (a) the Scottish Ministers;
- (b) the Department of Health, Social Services and Public Safety in Northern Ireland; 35
- (c) the National Assembly for Wales.
- (5) The appropriate authority may by order make such provision as it thinks necessary or expedient in consequence of the coming into force of this Act

- (including provision amending, repealing or revoking any enactment passed or made before the passing of this Act).
- (6) Unless an order under subsection (5) amends or repeals an enactment contained in an Act or an Act of the Scottish Parliament—
- (a) if it is made by the Secretary of State it must be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament; 5
 - (b) if it is made by the Scottish Ministers it must be made by statutory instrument subject to annulment in pursuance of a resolution of the Scottish Parliament; 10
 - (c) if it is made by the Department of Health, Social Services and Public Safety in Northern Ireland it must be made by statutory rule (for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)) subject to negative resolution.
- (7) The power to make an order under subsection (5) which does amend or repeal such an enactment— 15
- (a) is exercisable by the Secretary of State by statutory instrument but no such order may be made unless a draft of the order has been approved by a resolution of each House of Parliament;
 - (b) is exercisable by the Scottish Ministers by statutory instrument but no such order may be made unless a draft of the order has been approved by a resolution of the Scottish Parliament; 20
 - (c) is exercisable by the Department of Health, Social Services and Public Safety in Northern Ireland by statutory rule subject to affirmative resolution. 25
- (8) An order made by the National Assembly for Wales must be made by statutory instrument.
- (9) Negative resolution and affirmative resolution must be construed in accordance with section 41 of the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.)). 30
- (10) Enactment includes—
- (a) any provision of or instrument made under an Act of the Scottish Parliament;
 - (b) Northern Ireland legislation.
- 13 Short Title** 35
- (1) This Act may be cited as the Health Protection Agency Act 2004.
- (2) **Nothing in this Act shall impose any charge on the people or on public funds, or vary the amount or incidence of or otherwise alter any such charge in any manner, or affect the assessment, levying, administration or application of any money raised by any such charge.** 40

SCHEDULES

SCHEDULE 1

Section 1

HEALTH PROTECTION AGENCY

Membership of the Agency

- | | | |
|---|---|----|
| 1 | (1) The membership of the Agency is to be as follows – | 5 |
| | (a) the chairman; | |
| | (b) the chief executive; | |
| | (c) the prescribed number of non-executive members; | |
| | (d) the prescribed number of executive members. | |
| | (2) The chairman is to be appointed by the Secretary of State after consultation with each of the devolved authorities. | 10 |
| | (3) The non-executive members are to be appointed as follows – | |
| | (a) one is to be appointed by the Scottish Ministers; | |
| | (b) one is to be appointed by the Department of Health, Social Services and Public Safety in Northern Ireland; | 15 |
| | (c) one is to be appointed by the National Assembly for Wales; | |
| | (d) the remainder are to be appointed by the Secretary of State. | |
| | (4) The executive members are to be appointed by the chairman and the non-executive members of the Agency. | |
| | (5) The members of the Agency may appoint one of the non-executive members to be deputy chairman for such period (not exceeding the remainder of his period of office as member) as they specify on making the appointment. | 20 |
| | (6) The prescribed number is such number as the Secretary of State prescribes by regulations. | |
| | (7) But the Secretary of State must not act under sub-paragraph (6) unless he first consults each of the devolved authorities. | 25 |
| 2 | (1) The National Assembly for Wales may direct a Special Health Authority to exercise any function it has by virtue of paragraph 1. | |
| | (2) If the Assembly gives such a direction, the National Health Service Act 1977 (c. 49) has effect as if – | 30 |
| | (a) the direction is a direction under section 16D of that Act; | |
| | (b) the function is exercisable by the Special Health Authority under that section. | |
| 3 | (1) The Secretary of State may by regulations prescribe conditions which are to be satisfied in relation to a person before he is appointed as chairman or as a non-executive member. | 35 |
| | (2) But the Secretary of State must not act under this paragraph unless he first consults each of the devolved authorities. | |

- 4 The executive members (including the chief executive) are to be –
- (a) employees of the Agency, or
 - (b) persons seconded to the staff of the Agency.

Status

- 5 (1) The Agency is not to be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown. 5
- (2) The property of the Agency is not to be regarded as property of or property held on behalf of the Crown.
- 6 The Agency is to be treated as a cross-border public authority within the meaning of the Scotland Act 1998 (c. 46) for the purposes of the following provisions of that Act – 10
- (a) section 23(2)(b) (power of Scottish Parliament to require persons outside Scotland to attend to give evidence or produce documents);
 - (b) section 70(6) (legislation of Scottish Parliament not to require certain cross-border public authorities to prepare accounts). 15

Chief executive

- 7 The Agency must appoint a person to be its chief executive.

Terms of appointment

- 8 (1) The Secretary of State may by regulations make provision as to the terms on which the chairman and non-executive members of the Agency are to be appointed. 20
- (2) The regulations may in particular make provision as to –
- (a) the period for which they are to hold office;
 - (b) their eligibility for re-appointment;
 - (c) remuneration and allowances; 25
 - (d) circumstances in which their membership is to be suspended or terminated.
- (3) The Secretary of State may make payments to any person who is or has been chairman or a non-executive member of the Agency of such – 30
- (a) allowances;
 - (b) gratuities;
 - (c) compensation,
- as he thinks appropriate.
- (4) But the Secretary of State must not act under this paragraph unless he first consults each of the devolved authorities. 35
- 9 (1) The Agency must determine the conditions of service of and the remuneration and allowances payable to the executive members (including the chief executive) of the Agency.
- (2) The chief executive must not take part in a discussion or decision in pursuance of sub-paragraph (1) which relates to – 40
- (a) his own conditions of service;
 - (b) the remuneration and allowances payable to him.

- (3) An executive member must not take part in a discussion or decision in pursuance of sub-paragraph (1) which relates to –
 - (a) his own conditions of service;
 - (b) the remuneration and allowances payable to him.
- (4) If the chief executive or an executive member is a person seconded to the Agency his conditions of service and the remuneration and allowances payable to him must be determined by agreement between his employer and the Agency. 5

Disqualification for appointment

- 10 (1) The Secretary of State may by regulations make provision as to the circumstances in which a person is disqualified for being the chairman or a non-executive member of the Agency. 10
- (2) But the Secretary of State must not act under this paragraph unless he first consults each of the devolved authorities.

Proceedings

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- 11 (1) The Agency may appoint such committees and sub-committees as it thinks appropriate.
- (2) A committee or sub-committee may include or consist of persons who are not members of the Agency.
- (3) The Agency may delegate to a committee or sub-committee such of its functions as it thinks fit. 20
- (4) The Agency may make arrangements for the payment of such remuneration and allowances as it thinks fit to any person who is a member of a committee or sub-committee (whether or not he is also a member of the Agency).
- (5) This paragraph is subject to anything contained in a direction given by the Secretary of State. 25
- (6) But the Secretary of State must not act under sub-paragraph (5) unless he first consults each of the devolved authorities.
- 12 (1) The Agency may make such arrangements as it thinks fit with any other person for the discharge by that person of such of the functions of the Agency as are specified in the arrangements. 30
- (2) The arrangements may include such provision as the Agency thinks fit for the remuneration of such a person.
- 13 (1) The Agency may make such provision as it thinks fit to regulate its own proceedings. 35
- (2) This paragraph is subject to anything contained in a direction given by the Secretary of State.
- (3) But the Secretary of State must not give a direction to which sub-paragraph (2) applies unless he first consults each of the devolved authorities.
- 14 On any occasion when both the chairman and deputy chairman are, for any reason, unable to perform the duties of chairman the other members of the Agency may appoint one of the non-executive members to act in place of the chairman. 40

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- 15 The Public Bodies (Admission to Meetings) Act 1960 (c. 67) applies to the Agency.
- 16 The validity of any proceedings of the Agency is not affected by –
- (a) any defect in the appointment of the chairman or a member of the Agency; 5
 - (b) any vacancy in the office of chairman or in the membership of the Agency.

Staff

- 17 (1) The Agency may appoint such staff and on such conditions of service as it thinks fit. 10
- (2) A period of secondment on the staff of the Agency does not affect the continuity of a person's employment with the employer from whose service he is seconded.
- 18 A scheme maintained by the Atomic Energy Authority under paragraph 7(2) of Schedule 1 to the Atomic Energy Authority Act 1954 (c. 32) (pensions and pension schemes for officers and employees of the Authority) may apply to such of the Agency's employees as the Agency determines. 15

Finance

- 19 (1) The Secretary of State may pay to the Agency out of money provided by Parliament such sums as he thinks appropriate. 20
- (2) But in deciding any amount to be paid under sub-paragraph (1) the Secretary of State must take account of –
- (a) sums paid to the Agency by the Scottish Ministers under sub-paragraph (3);
 - (b) sums paid to the Agency by the Department of Health, Social Services and Public Safety in Northern Ireland under sub-paragraph (4); 25
 - (c) sums paid to the Agency by the National Assembly for Wales under sub-paragraph (5);
 - (d) any income received by the Agency from any other source. 30
- (3) The Scottish Ministers may pay to the Agency such sums as they think appropriate.
- (4) The Department of Health, Social Services and Public Safety in Northern Ireland may pay to the Agency such sums as the Department thinks appropriate. 35
- (5) The National Assembly for Wales may pay to the Agency such sums as the Assembly thinks appropriate.
- (6) A payment under this paragraph may be made at such time and subject to such conditions as the person making the payment thinks appropriate.
- 20 (1) The Secretary of State may make loans to the Agency out of money provided by Parliament. 40
- (2) A devolved authority may make loans to the Agency.
- (3) A loan may be made on such terms (including terms as to repayment and interest) as the person making the loan decides.

- 21 Sums received by the Agency under paragraph 19 or 20 must be applied by it in accordance with any direction given by the person making the payment or loan (as the case may be).
- 22 (1) The Agency must keep accounts in such form as the Secretary of State decides. 5
- (2) The Agency must prepare annual accounts in respect of each financial year in such form as the Secretary of State decides.
- (3) Before the end of the specified period following each financial year to which the annual accounts relate the Agency must send a copy of the annual accounts to – 10
- (a) the Secretary of State;
- (b) the Comptroller and Auditor General;
- (c) each of the devolved authorities.
- (4) The Comptroller and Auditor General must – 15
- (a) examine, certify and report on the annual accounts;
- (b) lay a copy of the accounts and of his report before each House of Parliament;
- (c) send a copy of his report to each of the devolved authorities.
- (5) The Scottish Ministers must lay a copy of the accounts and of the Comptroller and Auditor General’s report before the Scottish Parliament. 20
- (6) The Department of Health, Social Services and Public Safety in Northern Ireland must lay a copy of the accounts and of the Comptroller and Auditor General’s report before the Northern Ireland Assembly.
- (7) The specified period is such period as the Secretary of State directs.
- (8) The financial year is – 25
- (a) the period starting on the day the Agency is established and ending on the next 31st March;
- (b) each succeeding period of 12 months.
- 23 (1) The Auditor General for Wales and the Auditor General for Scotland may each require – 30
- (a) the Agency to give him access to the accounts at all reasonable times;
- (b) any person who has functions in relation to the accounts to provide him with reasonable assistance in the exercise of his functions.
- (2) A requirement under this paragraph must not be made unless the person proposing to make the requirement first consults the Comptroller and Auditor General. 35

Annual report

- 24 (1) The Agency must as soon as possible after the end of each financial year prepare and send to the Secretary of State a report on the carrying out of its functions during that year. 40
- (2) The Agency must provide the Secretary of State with such other reports and information as he directs relating to the exercise of its functions.
- (3) The Secretary of State must lay before each House of Parliament a copy of every report sent to him under sub-paragraph (1).
- (4) In this paragraph and in paragraphs 25 to 27 financial year has the same meaning as in paragraph 22. 45

- 25 (1) The Agency must as soon as possible after the end of each financial year prepare and send to the Scottish Ministers a report on the carrying out of such functions as it has which are exercisable within devolved competence (within the meaning of the Scotland Act 1998 (c. 46)) during that year.
- (2) The Agency must provide the Scottish Ministers with such other reports and information as they direct relating to the exercise of such functions as are so exercisable. 5
- (3) The Scottish Ministers must lay before the Scottish Parliament a copy of every report sent to them under sub-paragraph (1).
- 26 (1) The Agency must as soon as possible after the end of each financial year prepare and send to the Department of Health, Social Services and Public Safety in Northern Ireland a report on the carrying out of such functions as it has which relate to a transferred matter (within the meaning of section 4 of the Northern Ireland Act 1998 (c. 47)). 10
- (2) The Agency must provide the Department with such other reports and information as the Department directs relating to the exercise of such functions. 15
- (3) The Department must lay before the Northern Ireland Assembly a copy of every report sent to it under sub-paragraph (1).
- 27 (1) The Agency must as soon as possible after the end of each financial year prepare and send to the National Assembly for Wales a report on the carrying out of its functions in relation to Wales during that year. 20
- (2) The Agency must provide the Assembly with such other reports and information as the Assembly directs relating to the exercise of its functions in relation to Wales. 25

Authentication of seal

- 28 (1) The application of the Agency's seal is authenticated by the signature of the chairman or another member of the Agency.
- (2) A document purporting to be duly executed under the seal of the Agency or to be signed on behalf of the Agency must be received in evidence and (except to the extent that the contrary is shown) taken to be duly so executed or signed. 30
- (3) This paragraph does not apply in relation to Scotland.

Regulations

- 29 (1) A power to make regulations under this Schedule must be exercised by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament. 35
- (2) Regulations may make different provision for different purposes.

Devolved authorities

- 30 Each of the following is a devolved authority – 40
- (a) the Scottish Ministers;
- (b) the Department of Health, Social Services and Public Safety in Northern Ireland;
- (c) the National Assembly for Wales.

SCHEDULE 2

Section 8

TRANSFER OF PROPERTY AND STAFF, ETC.

Transfer schemes

- 1 (1) The property, rights and liabilities which may be the subject of a scheme include— 5
 - (a) any that would otherwise be incapable of being transferred or assigned, and
 - (b) rights and liabilities under a contract of employment.
- (2) A scheme may define the property, rights and liabilities to be transferred by specifying or describing them (including describing them by reference to a specified part of the transferor's undertaking). 10
- (3) A scheme may include supplementary, incidental, transitional and consequential provision.

Transfer

- 2 The property, rights and liabilities which are the subject of a scheme are, by virtue of this paragraph, transferred on the day appointed by the scheme in accordance with the provisions of the scheme. 15

Employment

- 3 The transfer by paragraph 2 of the rights and liabilities relating to an individual's contract of employment does not break the continuity of his employment, and, accordingly— 20
 - (a) he is not to be regarded for the purposes of Part 11 of the Employment Rights Act 1996 (c. 18) (redundancy payments etc.) or Part XII of the Employment Rights (Northern Ireland) Order 1996 (S.I. 1996/1919 (N.I. 16)) as having been dismissed by virtue of the transfer, and 25
 - (b) his period of employment with the transferor counts as a period of employment with the transferee for the purposes of that Act or Order.
- 4 (1) Paragraph 2 does not operate to transfer the rights and liabilities under an individual's contract of employment if, before the transfer takes effect, he informs the transferor or transferee that he objects to the transfer. 30
- (2) Where an individual does inform the transferor or transferee as specified in sub-paragraph (1), his contract of employment with the transferor is terminated immediately before the date on which the transfer would occur; but he is not, for any purpose, to be regarded as having been dismissed by the transferor. 35
- (3) This paragraph does not affect any right of an individual employed by a transferor to terminate his contract of employment if (apart from the change of employer) a substantial change is made to his detriment in his working conditions. 40
- 5 For the purposes of this Schedule, where a person holds any office or employment under the Crown on terms which do not constitute a contract of employment between that person and the Crown—

- (a) he shall be regarded as employed by the Crown by virtue of a contract of employment;
- (b) the terms of his employment shall be regarded as constituting the terms of that contract; and
- (c) in relation to such a person, the reference in paragraph 4(2) to dismissal by the transferor is to termination of his employment by the Crown. 5

Transitional

- 6 (1) Anything done by or in relation to the transferor for the purposes of or in connection with anything transferred by paragraph 2 which is in effect immediately before it is transferred must be treated as if done by or in relation to the transferee. 10
- (2) There may be continued by or in relation to the transferee anything (including legal proceedings) relating to anything so transferred which is in the process of being done by or in relation to the transferor immediately before it is transferred. 15
- (3) A reference to the transferor in any document relating to anything so transferred must be taken (so far as necessary for the purposes of or in consequence of the transfer) as a reference to the transferee.
- (4) A transfer under paragraph 2 does not affect the validity of anything done by or in relation to the transferor before the transfer takes effect. 20

SCHEDULE 3

Section 11

AMENDMENTS

Parliamentary Commissioner Act 1967 (c. 13)

- 1 (1) The Parliamentary Commissioner Act 1967 is amended as follows. 25
- (2) In Schedule 2 (departments etc. subject to investigation) at the appropriate place there is inserted –
- “Health Protection Agency.”
- (3) In the Notes to Schedule 2, after paragraph 11 there is inserted the following paragraph – 30
- “12 (1) This paragraph applies in relation to the Health Protection Agency.
- (2) No investigation is to be conducted in relation to any action taken by or on behalf of the Agency in the exercise in or as regards Scotland of any function to the extent that the function is exercisable within devolved competence (within the meaning of section 54 of the Scotland Act 1998).” 35

Radiological Protection Act 1970 (c. 46)

- 2 The Radiological Protection Act 1970 (so far as not repealed by or under any other enactment) shall cease to have effect. 40

Immigration Act 1971 (c. 77)

- 3 In Schedule 2 to the Immigration Act 1971 (administrative provisions as to control on entry) in paragraph 1 after sub-paragraph (2) there is inserted the following sub-paragraph –
- “(2A) The Secretary of State may direct that his function of appointing medical inspectors under sub-paragraph (2) is also to be exercisable by such persons specified in the direction who exercise functions relating to health in England or Wales.” 5

Local Government Act 1972 (c. 70)

- 4 In section 113 of the Local Government Act 1972 (placing of staff of local authorities at disposal of other authorities and bodies) in subsection (1A) –
- (a) after “enter into an agreement with” there is inserted “the Health Protection Agency,”; 10
- (b) in paragraph (a) after “disposal of” there is inserted “the Health Protection Agency,”; 15
- (c) in paragraph (b) after “employed by” there is inserted “the Health Protection Agency,”.

Health and Safety at Work etc. Act 1974 (c. 37)

- 5 (1) The Health and Safety at Work etc. Act 1974 is amended as follows.
- (2) In section 16(2) (consultation before approving code of practice), in paragraph (a) for “the National Radiological Protection Board” there is substituted “the Health Protection Agency”. 20
- (3) In section 50(3) (consultation before submission of proposals for regulations), in paragraph (a) for “the National Radiological Protection Board” there is substituted “the Health Protection Agency”. 25

House of Commons Disqualification Act 1975 (c. 24)

- 6 In the House of Commons Disqualification Act 1975, in Part 3 of Schedule 1 (other disqualifying offices), at the appropriate place there is inserted the following entry –
- “Chairman or non-executive member of the Health Protection Agency.” 30

Northern Ireland Assembly Disqualification Act 1975 (c. 25)

- 7 In the Northern Ireland Assembly Disqualification Act 1975, in Part 3 of Schedule 1 (other disqualifying offices), at the appropriate place there is inserted the following entry –
- “Chairman or non-executive member of the Health Protection Agency.” 35

Race Relations Act 1976 (c. 74)

- 8 In the Race Relations Act 1976, in Part 2 of Schedule 1A (persons subject to general statutory duty) at the appropriate place there is inserted the 40

following entry –

“The Health Protection Agency.”

National Health Service (Scotland) Act 1978 (c. 29)

- 9 In section 17A of the National Health Service (Scotland) Act 1978 (NHS contracts) for subsection (2)(h) there is substituted – 5
“(h) the Health Protection Agency;”.

Health and Safety at Work (Northern Ireland) Order 1978 (S.I. 1978/1039 (N.I. 9))

- 10 (1) The Health and Safety at Work (Northern Ireland) Order 1978 is amended as follows.
- (2) In Article 18(2) (consultation before approving code of practice), in sub-paragraph (a) for “the National Radiological Protection Board” there is substituted “the Health Protection Agency”. 10
- (3) In Article 46(3) (consultation before submission of proposals for regulations), in sub-paragraph (a) for “the National Radiological Protection Board” there is substituted “the Health Protection Agency”. 15

National Health Service and Community Care Act 1990 (c. 19)

- 11 (1) The National Health Service and Community Care Act 1990 is amended as follows.
- (2) In section 4 (NHS contracts) in subsection (2) after paragraph (i) there is inserted the following paragraph – 20
“(ii) the Health Protection Agency;”.
- (3) In section 21(2) (bodies in respect of which schemes may be made for meeting certain losses and liabilities) before “but a scheme under this section” there is inserted the following paragraph –
“(d) the Health Protection Agency;” 25

Health and Personal Social Services (Northern Ireland) Order 1991 (S.I. 1991/194 (N.I. 1))

- 12 In Article 8(2)(g) of the Health and Personal Social Services (Northern Ireland) Order 1991 (certain health bodies with power to make arrangements with one another) for paragraph (vi) there is substituted – 30
“(vi) the Health Protection Agency;”.

Employment Rights Act 1996 (c. 18)

- 13 In section 218(10) of the Employment Rights Act 1996 (health service employers where change does not affect continuity of employment) after paragraph (d) there is inserted the following paragraph – 35
“(dd) the Health Protection Agency.”

Government of Wales Act 1998 (c. 38)

- 14 In Schedule 5 to the Government of Wales Act 1998 (bodies subject to power of Assembly to require attendance and production of documents) after

paragraph 20 there is inserted the following paragraph—

“20A The Health Protection Agency.”

Freedom of Information Act 2000 (c. 36)

- 15 In Part 6 of Schedule 1 to the Freedom of Information Act 2000 at the appropriate place there is inserted— 5
“The Health Protection Agency.”

International Development Act 2002 (c. 1)

- 16 In Schedule 1 to the International Development Act 2002 (statutory bodies which may agree to exercise certain functions outside the United Kingdom) after “A Health Board” there is inserted— 10
“Health Protection Agency”.

Nationality, Immigration and Asylum Act 2002 (c. 41)

- 17 (1) Section 133 of the Nationality, Immigration and Asylum Act 2002 (disclosure of information by medical inspectors) is amended as follows. 15
(2) In subsection (4)(a) after sub-paragraph (v) there is inserted “or (vi) the Health Protection Agency.”
(3) In subsection (4)(b) after sub-paragraph (iii) there is inserted “or (iv) the Health Protection Agency.”
(4) In subsection (4)(c)— 20
(a) after sub-paragraph (i) omit “or”;
(b) after sub-paragraph (ii) there is inserted the following sub-paragraph—
“(iii) the Health Protection Agency, or”.
(5) In subsection (4)(d)— 25
(a) after sub-paragraph (ii) omit “or”;
(b) after sub-paragraph (iii) there is inserted “or (iv) the Health Protection Agency.”

Scottish Public Services Ombudsman Act 2002 (asp 11)

- 18 (1) The Scottish Public Services Ombudsman Act 2002 is amended as follows. 30
(2) In section 7 (matters which may be investigated: restrictions), after subsection (6) there is inserted—
“(6A) The Ombudsman must not investigate action taken by or on behalf of the Health Protection Agency in the exercise in or as regards Scotland of any function to the extent that the function is not exercisable within devolved competence (within the meaning of section 54 of the Scotland Act 1998 (c.46)).” 35
(3) In Schedule 2 (persons liable to investigation) after paragraph 89 (Unrelated

Live Transplant Regulatory Authority) there is inserted the following –

“Other bodies

90 The Health Protection Agency.”

The Health Protection Agency (Yr Asiantaeth Diogelu Iechyd) (Establishment) Order 2003 (S.I. 2003/505)

5

19 The Health Protection Agency (Yr Asiantaeth Diogelu Iechyd) (Establishment) Order 2003 is revoked.

The Health Protection Agency (Yr Asiantaeth Diogelu Iechyd) Regulations 2003 (S.I. 2003/506)

20 The Health Protection Agency (Yr Asiantaeth Diogelu Iechyd) Regulations 2003 are revoked.

10

SCHEDULE 4

Section 11

REPEALS

<i>Short title and chapter</i>	<i>Extent of repeal</i>	
Parliamentary Commissioner Act 1967 (c. 13)	In Schedule 2, the entry relating to the National Radiological Protection Board	15
Radiological Protection Act 1970 (c. 46)	The whole Act (so far as not already repealed)	
Health and Safety at Work etc. Act 1974 (c. 37)	Section 77	20
House of Commons Disqualification Act 1975 (c. 24)	In Schedule 1, in Part 2, the entry relating to the National Radiological Protection Board	
Race Relations Act 1976 (c. 74)	In Schedule 1A, in Part 2, the entry relating to the National Radiological Protection Board	25
Health and Safety at Work (Northern Ireland) Order 1978 (S.I. 1978/1039 (N.I. 9))	Article 52	
Government of Wales Act 1998 (c. 38)	In Schedule 5, paragraph 35	30
Freedom of Information Act 2000 (c. 36)	In Schedule 1, in Part 6, the entry relating to the National Radiological Protection Board	

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Nationality, Immigration and Asylum Act 2002 (c. 41)	In section 133(4), after paragraph (c)(i) “or” and after paragraph (d)(ii) “or”
Scottish Public Services Ombudsman Act 2002 (asp 11)	In Schedule 2, in Part 2, paragraph 80

Health Protection Agency Bill [HL]

A

B I L L

To establish the Health Protection Agency and make provision as to its functions.

Brought from the Lords 29th April 2004.

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