



# Health Protection Agency Act 2004

## 2004 CHAPTER 17

An Act to establish the Health Protection Agency and make provision as to its functions. [22nd July 2004]

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:—

VALID FROM 31/01/2005

### **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.

VALID FROM 31/01/2005

### **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;
  - (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—

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*Changes to legislation: There are currently no known outstanding effects for the Health Protection Agency Act 2004. (See end of Document for details)*

- (a) the Secretary of State (after consultation with the National Assembly for Wales) directs;
  - (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.
- (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—
- (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.
- (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;
  - (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.
- (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;
  - (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.))).

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VALID FROM 31/01/2005

### **3 Radiation protection functions**

- (1) The Agency has the following functions in relation to risks connected with radiation (whether ionising or not)—
  - (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.
- (3) The appropriate authority may direct the Agency to exercise any other function in relation to protection from the risks mentioned in subsection (1).
- (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—
  - (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.
- (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—
  - (a) transfer the function to the Agency;
  - (b) prevent the exercise of the function by the appropriate authority.

VALID FROM 01/03/2007

### **4 Functions: supplementary**

- (1) For the purpose of the exercise of its functions the Agency may do any of the following—
  - (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;

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- (e) provide training in relation to matters in respect of which the Agency has functions;
  - (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—
- (a) appropriate for facilitating, or
  - (b) incidental or conducive to,
- the exercise of its functions.
- (3) The power under subsection (2) includes power—
- (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.
- (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;
  - (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;
  - (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;
  - (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.
- (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.
- (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

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(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.

- (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).
- (12) But subsection (11) does not authorise a disclosure of information which contravenes the Data Protection Act 1998 (c. 29).
- (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.

VALID FROM 01/04/2013

## **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.
- (3) In subsection (1) the reference to other bodies includes bodies established outside the United Kingdom.

VALID FROM 31/01/2005

## **6 Appropriate authority**

- (1) Except as otherwise provided for in this section the appropriate authority is the Secretary of State.
- (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.

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- (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.
- (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.

VALID FROM 01/04/2013

## 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—
  - (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—
  - (a) any provision of or instrument made under an Act of the Scottish Parliament;
  - (b) Northern Ireland legislation.

VALID FROM 31/01/2005

## 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.
- (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.
- (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—
  - (a) the Scottish Ministers;
  - (b) the Department of Health, Social Services and Public Safety in Northern Ireland;
  - (c) the National Assembly for Wales.

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- (5) The appropriate authority may make a scheme for the transfer of property, rights and liabilities of a relevant body to the Agency.
- (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
  - (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.
- (9) A removed function is a function which is the subject of the direction or order which the appropriate authority varies or revokes.
- (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.
- (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.

VALID FROM 31/01/2005

## **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.

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VALID FROM 01/04/2009

## **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 (c. 43).
- (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.
- (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.

VALID FROM 01/04/2013

## **11 Amendments and repeals**

- (1) Schedule 3 contains amendments.
- (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**

- (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.
- (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;
  - (c) the National Assembly for Wales.



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- (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;
  - (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;
  - (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—
- (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;
  - (c) is exercisable by the Department of Health, Social Services and Public Safety in Northern Ireland by statutory rule subject to affirmative resolution.
- (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.)).
- (10) Enactment includes—
- (a) any provision of or instrument made under an Act of the Scottish Parliament;
  - (b) Northern Ireland legislation.

## 13 Short Title

This Act may be cited as the Health Protection Agency Act 2004.

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## SCHEDULES

VALID FROM 31/01/2005

### SCHEDULE 1

Section 1

#### HEALTH PROTECTION AGENCY

.....

VALID FROM 31/01/2005

### SCHEDULE 2

Section 8

#### TRANSFER OF PROPERTY AND STAFF, ETC.

.....

### SCHEDULE 3

Section 11

#### AMENDMENTS

PROSPECTIVE

#### *Parliamentary Commissioner Act 1967 (c. 13)*

<sup>F1</sup> .....

#### **Textual Amendments**

- F1** Act repealed (except s. 11(1) for certain purposes and Sch. 3 para. 3) (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), s. 56(2)(3)306(4); S.I. 2013/160, art. 2(2) (with arts. 78(2)9)

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VALID FROM 01/04/2005

*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.

*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.”

VALID FROM 01/04/2005

*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, ”;
  - (b) in paragraph (a) after “disposal of” there is inserted “ the Health Protection Agency, ”;
  - (c) in paragraph (b) after “employed by” there is inserted “ the Health Protection Agency, ”.

VALID FROM 01/04/2005

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

VALID FROM 01/04/2013

- 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 ”.
  - (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 ”.

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VALID FROM 01/04/2005

*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. ”

VALID FROM 01/04/2005

*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. ”

VALID FROM 01/04/2005

*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 following entry— “ The Health Protection Agency. ”

VALID FROM 01/04/2005

*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—  
“(h) the Health Protection Agency;”.

VALID FROM 01/04/2005

*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 subparagraph (a) for “the National Radiological Protection Board” there is substituted “the Health Protection Agency”.

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- (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 ”.

VALID FROM 01/04/2005

*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—  
“(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;”.

VALID FROM 01/04/2005

*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—  
“(vi) the Health Protection Agency;”.

VALID FROM 01/04/2005

*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—  
“(dd) the Health Protection Agency.”

VALID FROM 01/04/2005

*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—

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“20A The Health Protection Agency.”

VALID FROM 01/04/2005

*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— “ The Health Protection Agency. ”

VALID FROM 01/04/2005

*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— “ Health Protection Agency ”.

VALID FROM 01/04/2005

*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.
- (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)—
- (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)—
- (a) after sub-paragraph (ii) omit “or”;
  - (b) after sub-paragraph (iii) there is inserted “or (iv) the Health Protection Agency.”

VALID FROM 01/04/2005

*Scottish Public Services Ombudsman Act 2002 (asp 11)*

18 (1) The Scottish Public Services Ombudsman Act 2002 is amended as follows.

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(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)).”

(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.”

VALID FROM 01/04/2005

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

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

VALID FROM 01/04/2005

*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.

VALID FROM 01/04/2005

SCHEDULE 4

Section 11

REPEALS

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